

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF NEW MEXICO

3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 VS.

CR. NO. 15-4268 JB

6 ANGEL DELEON, et al.,

7 Defendants.

8 VOLUME 1

9 Transcript of Motion to Suppress Proceedings
10 before The Honorable James O. Browning, United States
District Judge, Las Cruces, Dona County, New Mexico,
11 commencing on December 11, 2017.

12 For the Government: Mr. Randy Castellano; Mr.
Matthew Beck

13 For the Defendants: Mr. Brock Benjamin; Ms. Cori
14 Harbour-Valdez; Mr. Robert Cooper; Mr. Jeff Lahann;
15 Mr. John Granberg; Mr. Scott Davidson; Ms. Amy Jacks;
16 Mr. Richard Jewkes; Ms. Amy Sirignano; Mr.
Christopher Adams; Mr. Marc Lowry; Ms. Theresa
17 Duncan; Ms. Carey Bhalla; Mr. William Maynard; Mr.
Ryan Villa; Mr. Donovan Roberts; Ms. Lisa Torraco;
Ms. Angela Arellanes; Mr. Samuel Winder

18 For the Defendants (Via telephone): Mr. James
19 Castle; Ms. Fox-Young

1 THE COURT: All right. Let's go on the
2 record. Does anybody know anything about Angela
3 Arellanes? Maybe that's her coming in.

4 There you are. I was just asking about
5 you.

6 All right. So it looks like everybody has
7 got an attorney.

8 And, Ms. Sirignano, I think you have your
9 expert, Tim Bryan, here today?

10 MS. SIRIGNANO: Yes, Your Honor. Good
11 afternoon. This is Mr. Bryan here.

12 THE COURT: All right. And Ms. Fox-Young,
13 are you on the phone?

14 MS. FOX-YOUNG: I am, Your Honor. Good
15 afternoon.

16 THE COURT: And you'll be joining us
17 shortly?

18 MS. FOX-YOUNG: Yes.

19 THE COURT: All right. And you also have
20 Michelle Anderson coming a little later today?

21 MR. VILLA: She's going to join me, Your
22 Honor. Rochelle Anderson.

23 THE COURT: Rochelle. Is there any other
24 changes to counsel from Friday?

25 MR. BENJAMIN: Brock Benjamin, Your Honor.

1 THE COURT: Mr. Benjamin, good afternoon to
2 you.

3 Ms. Sirignano?

4 MS. SIRIGNANO: Mr. Adams is on his way
5 from the airport and will be here shortly.

6 MR. DAVIDSON: Mr. Blackburn will be
7 joining us later on this afternoon or tomorrow
8 morning.

9 THE COURT: Anyone have issues with
10 counsel?

11 MR. VILLA: Your Honor, I think
12 Ms. Fox-Young intends to be here around 1:00, but she
13 will be on the phone. I'm not sure exactly where
14 they are in transit. I didn't want you to think she
15 was going to walk in.

16 THE COURT: No, I knew it was later today
17 is what I've been told.

18 All right. If I understand what we were
19 going to do, and that is we were going to take up the
20 recording device first thing this afternoon. Is that
21 everybody's agreement?

22 MR. BECK: That's right, Your Honor.

23 THE COURT: Let me make a few comments
24 about that, then I'll hear what anybody wants to tell
25 me or argue. I guess I was surprised by the quality,

1 amount of material that was put into the motion. I
2 don't know if this is something that is stock around
3 the country, this is an issue, or what. But it did
4 seem to me the Government was working pretty hard to
5 protect these devices. On the other hand, there was
6 a lot of material disclosed in there. And so I guess
7 I have two reactions to it. One, is there is so much
8 material disclosed in there, what is the Government
9 concerned about, because they've given so much
10 information? What is that it they're trying to keep
11 secret? And I guess, on the flip side, the
12 defendants now have so much information about these
13 recording devices, why do you need to see the ones
14 that the Government actually used here? It seems to
15 me that the defendants have gotten a lot of
16 information here, and I'm not sure why they need to
17 actually see the devices that the Government has.

18 So -- and I know that Ms. Sirignano wanted
19 to respond to this motion. That may make some sense,
20 given the effort the Government has put in to
21 protecting these devices. I think I want to move
22 cautiously and deliberately on this, and not make any
23 sort of rash decisions. If it really does implicate
24 national security, I think it's in all of us'
25 interests to be careful about forcing the disclosure

1 of this.

2 So with those comments, Mr. Beck, it's your
3 motion to reconsider an oral -- I think my memory
4 is -- and you can correct me if I'm wrong -- you were
5 having some difficulty getting the FBI to respond
6 quickly and fully about these devices. And so the
7 oral order was primarily to get somebody's attention,
8 and let's have an informed debate about it. So it's
9 teed up as a motion to reconsider, but it's probably
10 really the first time we're looking at it in this
11 depth.

12 MR. BECK: I think that's right, Your
13 Honor. And I'll respond to a couple of the
14 preliminaries that the Court brought up. The
15 Government's interest is in protecting the method of
16 how these devices are secreted in the prison or
17 hidden in the prison. And primarily just dimensions
18 of the devices, the look of the devices.

19 THE COURT: If you've disclosed the exact
20 model that you used here, can't they get information?

21 MR. BECK: It's possible they can. I don't
22 know what is out there in the public sphere. They
23 cannot --

24 THE COURT: So you're concerned about them
25 seeing the size of it, the actual size and shape?

1 MR. BECK: And being able to see the size
2 and shape, number one, but also sort of the
3 counterintelligence. Now, it's my understanding that
4 you can't just plug in this device with the USB cord,
5 or like a lightning wire that we have for our
6 iPhones, or something like that; that you need
7 special hardware and software to do anything with
8 these devices. But that's what the Government's
9 interested in protecting, as well as just how these
10 devices may look in person. Aside from that, it's
11 being able to actually access the devices.

12 So ADS, the company that makes these, I
13 don't know whether there is information on the
14 internet of what a HAWK8 device looks like.

15 THE COURT: Do they sell these to anybody
16 but the federal government?

17 MR. BECK: They sell them -- and Special
18 Agent Williamson will have more details about where
19 they sell them. They sell them to government. I
20 believe they sell them to federal and local and
21 state. But I'm not sure on that. And I think they
22 sell them outside the United States to other
23 governments. But it's a proprietary device, it's a
24 proprietary software. You and I can't go to ADS and
25 try to purchase one of these. They don't give the

1 FBI their software, they don't give law enforcement
2 agents their software. So they have protections in
3 place, the data integrity systems, for reasons that
4 may appear obvious, after reading the brief.

5 THE COURT: So shape, and size, and then
6 the charging device, how they are charged?

7 MR. BECK: It's not how they're charged.
8 It's how the data on the device is accessed and
9 downloaded. So they're not charged. They use
10 batteries, as becomes obvious when some of the data
11 is looked at, you see the batteries ran dead. But
12 the way in which the data is downloaded.

13 THE COURT: You attached some transcripts
14 of some hearings. Has any judge or court ordered the
15 production of these, and have they been produced
16 elsewhere?

17 MR. BECK: Speaking with the FBI
18 Operational Technology Division, the attorneys that I
19 spoke with could not say. They had never experienced
20 a court ordering disclosure of these devices. They
21 couldn't say for sure that it had never happened
22 before they'd been there. But one of the attorneys,
23 I think, had been there 10 or 15 years. So in the
24 last --

25 THE COURT: They're not aware of anybody?

1 MR. BECK: That's right, Your Honor.
2 That's right.

3 And so we can either have response, or I
4 can put Special Agent Williamson up on the stand, and
5 he can go through some of these things. I do think
6 it's probably helpful to the defense at least -- and
7 that's one of the reasons that the brief is as long
8 it is, is that the Government is not trying to hide
9 things.

10 THE COURT: I'm not trying to insult you by
11 this, but was this something that was written in
12 Washington and sent out?

13 MR. BECK: No.

14 THE COURT: You wrote it.

15 MR. BECK: Yes. And I provided it to the
16 attorneys in Washington so that they could make sure
17 that this was publicly available information and okay
18 for public filing. But, yeah, it was based on my
19 discussions with them. And so what I was trying to
20 do here was disclose as much information as I could
21 for everyone in the room, so that everyone would see,
22 basically, they have everything that they may get,
23 other than by looking at the devices, which could be
24 used nefariously, if they're able to inspect these
25 devices.

1 And so what I was saying is I know that we
2 have come up with issues in this case in which the
3 metadata that's displayed through ADS's software, is
4 not accurate in terms of real world.

5 And I was willing to -- I thought it may be
6 helpful for everyone to have Special Agent Williamson
7 explain how that came about, and that that inaccurate
8 metadata is actually the same data that was on the
9 recorder when it recorded.

10 THE COURT: All right. So you are going to
11 put on Mr. Williamson?

12 MR. BECK: I think so, Your Honor.

13 THE COURT: All right. Mr. Williamson, if
14 you'll come up and stand next to the witness box on
15 my right, your left, before you're seated, Ms.
16 Standridge will swear you in.

17 HUGH S. WILLIAMSON,
18 after having been first duly sworn under oath,
19 was questioned and testified as follows:

20 DIRECT EXAMINATION

21 THE CLERK: Please be seated. State your
22 full name, spelling it for the record.

23 THE WITNESS: My name is Hugh S. Williamson
24 H-U-G-H, Hugh. S as in Sam. Williamson,
25 W-I-L-L-I-A-M-S-O-N.

1 THE COURT: Mr. Williamson. Mr. Beck.

2 BY MR. BECK:

3 Q. Special Agent Williamson, how are you
4 employed?

5 A. I'm the Supervisory Special Agent at the
6 FBI, assigned to the Operational Technology Division.

7 Q. And where are you located?

8 A. In the Audio Surveillance Unit at Quantico.

9 Q. What is your actual job title?

10 A. I'm the Program Manager for the FBI's
11 Covert Body Recorder Program.

12 Q. And what are your duties in that role?

13 A. I supervise engineers, electronics
14 technicians, in the acquisition, testing, and
15 maintenance of body recorders used throughout the
16 FBI.

17 Q. How long have you been the program manager?

18 A. Since 2013.

19 Q. What did you do before that?

20 A. Prior to that, I was a Supervisory Special
21 Agent in the Operational Technology Division, working
22 coordination of technical support investigations.
23 And prior to that, at the Counterterrorism Division,
24 I was a supervisor for five years.

25 Q. What kind of training and experience do you

1 have with what I'm going to call ADS devices? ADS
2 being the company that manufactures these devices.

3 A. Training provided by the FBI to tech agents
4 and to ETs in the use and maintenance of the devices,
5 and training through on-the-job training working with
6 the devices in the company.

7 Q. Have you ever been qualified to give expert
8 testimony in a case before?

9 A. Yes, sir.

10 Q. And when was that?

11 A. That was in the Peterson trial, and I
12 believe that was 2016.

13 Q. Have you ever testified in court about ADS
14 devices before?

15 A. Yes.

16 Q. And do you remember the case that that was
17 in?

18 A. That was in Cleveland, and I think that
19 was -- actually, that was 2015, the other was 2016 --
20 February 2015, a federal trial in Cleveland.

21 Q. And other than those two trials, have you
22 ever provided in-court testimony?

23 A. No, sir.

24 Q. Generally, what is a body recorder?

25 A. It's a small, solid state digital recorder,

1 a little computer. All it does is record audio.

2 Q. Are you aware of what audio recording
3 devices were used in this case, which I'll call the
4 SNM case?

5 A. I provided the makes and models of the ones
6 that were utilized, yes.

7 Q. What are those devices?

8 A. The ones I'm aware of was a HAWK8, and a
9 RAVEN2A are the ones specifically. And then, I think
10 there may have been an EAGLE as well.

11 Q. And who manufactures those three devices?

12 A. They're manufactured by Adaptive Digital
13 Systems, ADS.

14 Q. Can you tell us a little bit about the data
15 integrity systems between ADS and FBI that provide
16 the framework for these Bird devices, these ADS
17 devices?

18 A. The FBI hired ADS to make a one-way
19 recorder, all it could do is record and download. It
20 can't be tampered with by agents, or anyone else.
21 And in order to do that, the ADS manufacturer uses
22 proprietary software on the device to manage how it
23 functions, and an onboard device. It uses cyclic
24 redundancy checks to make sure that the data it
25 collects has a CRC hash, as well as when it's

1 downloaded, it uses a SHA256 encryption algorithm to
2 hash the final data.

3 Q. There was lot there to unpack. We'll come
4 back to a lot of it.

5 What do you mean a one-way recording?

6 A. Basically, you turn it on; it energizes the
7 microphone, which sends a signal to the transducer,
8 to the chip that turns it into digital information.
9 And it's recorded as you're recording on the device.
10 And when you turn it off, it stops doing that.

11 Q. How does the person using the device turn
12 it off or on?

13 A. It can be turned on or off manually, or it
14 can be programmed to be turned on and off using the
15 USBird software.

16 Q. When you talked about the data and the
17 coding on the device, does the FBI have source code
18 or a way to access that code?

19 A. No. That is held by ADS. And deliberately
20 so. We don't want to know what it is. We want to be
21 able to say that we have no access to the device;
22 can't control it, can't do anything to it except for
23 the propriety software that allows you certain
24 functions.

25 Q. Now, the person using the device in the

1 real world, with the on and off switch, can they
2 manipulate the date on the device?

3 A. They can only turn it on and turn it off.

4 Q. Can they record over what's on the device?

5 A. No.

6 Q. Can they rewind it?

7 A. No.

8 Q. Does the device have a -- what I'll refer
9 to as a computer screen, some screen on it, where you
10 can see the data that's on there or the tracks, or
11 recording sessions? Does the device have that
12 computer screen?

13 A. No.

14 Q. Now, explain to me -- explain to us all how
15 these different, what I'll refer to as recording
16 sessions come about. How are they created?

17 A. When the recorder is turned on, the
18 recorder begins collecting audio and putting it into
19 the device. And it creates a session, an audio
20 session, and attaches -- as I said, the cyclic
21 redundancy checks are created as it's doing that in
22 that session. And as long as that session -- as long
23 as it's turned on, it will continue to record. If it
24 reaches a certain length, it will stop that session
25 and begin a new session of recording, in terms of it

1 will be a new file. It will still be recording, it
2 will be an unbroken recording in that regard. But
3 you won't hear anything when you listen to it. It
4 won't stop recording until it runs out of power or
5 you turn it off.

6 Q. If it runs out of power to stop the
7 recording, versus the user turning off the device, is
8 there a way that we can know that looking back at
9 what was on the recorder?

10 A. Yes. When the recorder runs out of power,
11 the program on the recorder is designed to indicate
12 that it occurred, and it will give you a flag. And
13 it's on the Bird player as well that's provided with
14 the evidence, it gives the flag to indicate if that
15 happens.

16 Q. And is that also true -- do we get a flag
17 when the device itself, I think, as you said, breaks
18 the recording into different sessions?

19 A. Yes, there is a series of flags that ADS
20 has designed into it to indicate certain things that
21 occur on the recorder. Not everything. One of them
22 is a flag to indicate when the session has reached a
23 certain length and it breaks it up. And it does that
24 so it can provide the right size to put on an
25 evidentiary disc.

1 Q. So it sounds like one way a session is
2 created is the user turns the device on and then off
3 again; is that true?

4 A. Yes.

5 Q. Another way is if the device splits the
6 file because of its size; is that true?

7 A. That can happen, too, yes.

8 Q. And then a third way is that the device
9 would run out of power?

10 A. There is one where it's a low battery, or
11 power stops, is two different flags.

12 Q. All right. Is there another way in which a
13 recording session may be created?

14 A. I don't understand the question.

15 Q. Is there another -- beside those three, on
16 and off; the internal software, file size, and the
17 running out of power in some method, is there another
18 way in which a recording session may be created on
19 the device?

20 A. Not that I'm aware of.

21 Q. How is the information, the data on the
22 device taken off of the device?

23 A. The data on the device is downloaded using
24 USBird software. And it's proprietary software
25 that -- it's the only way you can see the device,

1 when you mount it to your computer, it's the only way
2 that you can see that it has recordings on it. And
3 it allows you to download those recordings to an
4 evidentiary disc.

5 Q. Who downloads the recordings onto the
6 evidentiary disc?

7 A. In the FBI, depending on the division,
8 different personnel could do it. It could be a case
9 agent. It could be an evidentiary operations
10 technician.

11 Q. Are you aware of how it works in the
12 Albuquerque office?

13 A. My understanding in Albuquerque is that all
14 ELSUR is downloaded by ELSUR operations technicians.

15 Q. I want to go a little bit more in-depth
16 about when the information is downloaded. What's
17 your understanding of what is created on this
18 evidentiary disc when you download it, how that's
19 made?

20 A. When the USBird software conducts a
21 download of evidence from the recorder, it takes all
22 of the recorded sessions, all the sessions that are
23 collected, and takes the metadata that's on the
24 recorder. And there is another file called an IDS
25 file, which is used when you have a video recording,

1 which was not used in this case. And it creates a
2 SHA256 hash calculation for that -- those files.

3 Q. What's a SHA256 hash creation? I just
4 learned this this morning, so it may be helpful for
5 some.

6 A. It's a secure hash algorithm that was
7 created by NSA, and was released through the federal
8 government to all industry in 2001. It's the
9 National Institutes of Standards hash algorithm to
10 secure data, to show that something that was created,
11 the data that was on a computer or device that was
12 downloaded is the same as it was before. It creates
13 a unique hash to the ones and zeros that make up
14 those files.

15 Q. What happens if you're downloading from the
16 recording device, and you don't download all the data
17 onto the evidentiary disc?

18 A. If you don't download all the data from the
19 recorder onto a disc, it's not considered evidence.
20 It has to be everything downloaded to be evidence.
21 That's the way it's designed. You have to download
22 everything from the recorder onto an evidentiary
23 disc. And if you don't do that, the device -- you
24 can't erase it. And also, if you go to try and make
25 another recording, it won't let you make another

1 recording.

2 Q. What happens when all of the data is
3 downloaded from the device onto the evidentiary disc?

4 A. In terms of the process, or --

5 Q. Yes.

6 A. The USBird software, as I said, it
7 generates a SHA256 hash calculation. And it checks
8 it against the original, and then it burns it to a
9 disc that is finalized. And the disc itself being
10 finalized cannot be manipulated. And it allows you
11 to go back, if you desire, if you need to, to erase
12 the recorder. And you have to erase the recorder if
13 you want to use it again.

14 Q. Now, the information on the recorder, if
15 you do erase the recorder after the evidentiary disc,
16 is that information stored anywhere else besides the
17 evidentiary disc?

18 A. No. And the way that ADS software works,
19 it writes ones and zeros all over the recorder's
20 short-term memory, or its flash memory, they call it.

21 Q. Is that information, when you download it,
22 stored on an FBI hard drive as well as the disc?

23 A. It can be copied and put onto something
24 else. But the evidence is stored in an ELSUR
25 operations storage room.

1 Q. The evidence -- are you referring to the
2 disc itself is stored in the ELSUR --

3 A. The disc itself.

4 Q. What I'm asking, the information that goes
5 on that evidentiary disc, is that stored in the cloud
6 or at FBI headquarters?

7 A. In some cases, it is uploaded to certain
8 databases in other types of investigations; not -- to
9 my knowledge, it could also be put into other
10 databases used for language review, if you had a
11 language you needed to review evidence, a copy of it
12 could be put up there. But it would be a copy of the
13 evidence. It wouldn't be the original evidence.

14 Q. Was there a backup of the evidentiary discs
15 in this case?

16 A. I understand there are copies. I have
17 several copies here.

18 Q. Besides copies on CDs, is there a backup in
19 a computer or mainframe or cloud?

20 A. There is not that I know of, not for this
21 case, no.

22 Q. How can you ensure that the data that was
23 on your recording device is the same data that was
24 put on the evidentiary disc?

25 A. Well, we know that the ADS software, using

1 proprietary software, creates a hash calculation.
2 And it provides a text file, which is that hash
3 calculation. And that's part of the original
4 evidence created at download. And you can go back
5 and you can run a SHA256 calculation against what you
6 have in evidence, using an after-market SHA256
7 calculator, and compare it to the hash calculation
8 that was originally created with USBird software, is
9 one method.

10 Q. And did you do that to validate some of the
11 evidentiary discs in this case?

12 A. I did.

13 MR. BECK: At this time, Your Honor, I'd
14 like Special Agent Williamson to demonstrate how he
15 checked the evidentiary disc, what we're calling
16 D55 -- checked the metadata, with this third party
17 SHA256 software to ensure that what was downloaded
18 from the device is the same as what appears on the
19 evidentiary disc, which the defendants have.

20 THE COURT: All right. You may.

21 THE WITNESS: Thank you, sir.

22 Q. And just go ahead, and if you would,
23 Special Agent Williamson, narrate what you're doing
24 on your computer there for us in the courtroom.

25 A. So first --

1 THE COURT: Let me ask Ms. Jacks, Ms.
2 Sirignano, y'all have been the most interested in
3 this. If a couple of you want to come up closer and
4 stand over here, you're welcome to do it.

5 MS. JACKS: Okay, thank you. I thought we
6 were going to see it on the screen.

7 THE COURT: Oh, we're going to see it on
8 the screen. Okay.

9 A. Okay. First, to show -- this is the player
10 software. It shows the sessions for D55, which is --

11 Q. By the player software, you're referring to
12 what comes on these evidentiary discs entitled
13 player.exe; is that right?

14 A. Yes. I can show you that file. Here is
15 that HAWK file here. And these files here are all
16 files that are used to make the player work, dll
17 files, they have nothing to do with the evidence, it
18 just makes the player play what's on the evidence,
19 which is this file here, 1168.

20 Q. Special Agent Williamson, I'm going to cut
21 you off right there. So 1168, is that the serial
22 number of the device used in that case?

23 A. Yes, that's the serial number for the HAWK8
24 that was used. So on that file, there is 11 sessions
25 or 11 files represent 11 sessions, and the IDS file,

1 which I mentioned is when you have a video recording
2 and you have to translate that video evidence so the
3 Windows machine can see video. That was not used
4 here. There is no video. The RCD file which
5 contains the metadata. And that RCD file, we can't
6 access it. There is a proprietary hash that ADS puts
7 on that, so I can't go in there and manipulate that
8 RCD file. But it is a hash calculation against all
9 these files.

10 Q. Not unless you go in and manipulate that
11 file right there, .RCD, on our computer?

12 A. No one can. Only the vendor can go back
13 and look at it and tell you what's on there without
14 going through a USBird software. It would only allow
15 certain information.

16 THE COURT: Mr. Beck. Let me make sure I
17 got everybody on the phone. I know I had Ms.
18 Fox-Young.

19 Ms. Strickland, are you on the phone? Is
20 there anybody besides Ms. Fox-Young on the phone?

21 MR. ADAMS: Chris Adams, Your Honor.

22 THE COURT: Okay. Mr. Adams, but
23 Ms. Strickland is not on the phone? Ms. Strickland,
24 if you're on the phone, do you have your mute button
25 on?

1 All right. Go ahead, Mr. Beck.

2 Q. So these files that we're looking at here,
3 which start at 1168.001 and go through 1168.011, is
4 there any way to access those files without the ADS
5 proprietary software that you know of?

6 A. No, sir, there is no way, because it's
7 locked down. It only can be seen using their
8 proprietary software, and we don't have the source
9 code for that.

10 Q. And are those the files that are on the
11 recording device before it's downloaded?

12 A. All these files, 001 through 11, and then
13 the IDS and the RCD file, were on the HAWK recorder
14 before it was downloaded. And then the text file was
15 created by the USBird software when it created the
16 SHA256 hash calculation. And that text file, if I
17 opened it up, will show you the calculation numbers
18 for the 11 and the RCD and the IDS.

19 Q. So these are the hash values -- these are
20 the hash values for each of those files? Is that
21 what we're seeing here on this text file?

22 A. Yes, sir. And I'd have to go back and show
23 you the USBird verification to show you the
24 original -- how USBird does it.

25 Q. All right. I think earlier you said that

1 you could check these hash files using a third-party
2 recorder -- or third-party software.

3 A. Yes. And so because SHA256 is a national
4 standard, international standard, it's open source to
5 everyone. Anyone can use it, that algorithm is
6 available through third-party vendors. And this is
7 one program that OTD-FBI purchased for our use in
8 this case.

9 Q. And so at the top there I see in blue
10 writing of this third-party software, it says
11 <http://www.quickhashgui.org>, is that where you may be
12 able to download this software?

13 A. Yes. I think it's a free download.

14 Q. So continue on to show us how verified.

15 A. So this software, in particular, provides
16 an ability to check the hash calculation of an item
17 of evidence -- any file that's been hashed against a
18 variety of algorithms. MD5 is one, SHA1. And in
19 this case it's SHA256. So select that algorithm to
20 be used. And everyone has that algorithm. It can be
21 obtained anywhere. And then I select a directory. I
22 don't want to save to it to a CSC so I took care of
23 that.

24 Q. So to get to the screen we're looking at
25 that says "select directory," you clicked on the tab

1 at the top of the software that is file capital S; is
2 that right?

3 A. Yes, sir, that tab file, capital S, allows
4 you to run the hash against multiple files.

5 Q. How did you run the hash against the files
6 on this evidentiary disc?

7 A. Using select directory, I found it on the
8 drive where the disc is, go to where the evidence is,
9 to copy evidences. And there is the HAWK folder.
10 And there is the 1168 folder. I select that folder.
11 And then quick hash will run everything on that
12 folder through a SHA256 algorithm and calculate a
13 value for each file.

14 Q. And that 1168 file we saw there, that's the
15 file we just looked at that had 11268.001 through
16 1168.011?

17 A. Correct.

18 Q. Go ahead, press "okay" to run it through
19 that file.

20 A. So your result for those files on 55, it
21 provides a -- open this up -- it provides a hash
22 value. So that's the solution. So look at 001, and
23 there is all those numbers and letters. That's the
24 solution or the hash value that was created by
25 SHA256, when it ran that file, 001, all the ones and

1 zeros in that file through the algorithm. And I can
2 go back and I can compare that.

3 Q. When you say "go back," now you're clicking
4 on the notepad icon at the bottom where you had the
5 .txt file open?

6 A. Right. And I'll show you where it came
7 from again. This is from the original evidence, this
8 is what was created by the USBird software that is
9 from the ADS recorder. This is a hash calculation
10 value created by USBird when it downloaded the
11 original evidence, is in this file, 1168 text --
12 .txt. And this is it. And I can take it and I can
13 compare it against the other files that I just
14 hashed.

15 An example, go to 001, and on the text file
16 from USBird from the ADS recorder, the first four
17 digits are 9DD9. And if you look at 001 through the
18 quick hash, there is 9DD9. You look at the last ends
19 FOCAA. And look down here FOCAA on 001. And the
20 same thing for all these files. I did them last
21 night. They match up. It's a match. I'm absolutely
22 certain these are identical files.

23 Q. Thank you. If you would, let's go back
24 into the player software. So now we're looking at
25 the player software that comes on the disc, and there

1 seems to be -- how many recording sessions are
2 reflected here?

3 A. Eleven.

4 Q. And how many of those recording sessions --
5 and you may have to think about this -- how many of
6 those recording sessions were created because the
7 person who had this device turned it on and then back
8 off again manually?

9 A. Well, because I know one of them spanned
10 here, I'd have to go back and look at the date -- I'd
11 have to go back and look at the times.

12 Q. When you say, "one of them spanned here" --

13 A. Number 8 was definitely a recording that
14 was cut short, so it had to continue recording as
15 another session, because the device said: I'm going
16 to chop this whole session into lengths that can be
17 put onto a disc.

18 Q. And you know that how?

19 A. Look at the date and time here on line 8,
20 that is a green flag, which is -- the green flag
21 comes from the flags here provided by ADS. There is
22 a green flag, recording was split due to size limit.
23 So that's something that the recorder created during
24 the recording session. And it was put in there as
25 part of the original session. You look at the date

1 where it says ending 2/4/2016, the time of 19:52 and
2 26 seconds. Look at the next line, line 9. It says
3 the start time is 2/4/2016, 19:52 and 26 seconds. So
4 the start time and end time are the same, which tells
5 me that it's a continuation of that same recording
6 that was started at 19:30 on 2/4. And those two
7 there are one recording because then it ends at 19
8 minutes 53 seconds. And then there is the -- a new
9 recording begins later. They're not the same,
10 they're not connected.

11 Q. Let me start looking at session 9 and 10 on
12 this 1168 disc. Does it look to you like session 9
13 ends on February 4 at 19:53:13?

14 A. Yes.

15 Q. Then session 10 begins at 19:57:20; is that
16 right?

17 A. Yes.

18 Q. So that's approximately --

19 A. Five minutes.

20 Q. -- five minutes apart. Does that indicate
21 to you -- does that establish that in 9 the device
22 was turned off, and then approximately five minutes
23 later, the user then clicked the on button to turn it
24 back on and begin the next session?

25 A. If it was a manually turned on and off

1 recording, yes.

2 Q. And if this was created with the HAWK8
3 device, is it a manually operated recording device?

4 A. My understanding of the case it was used in
5 the manual mode, yes.

6 Q. Now, did you look at another copy of an
7 evidentiary disc that we labeled ID56 in this case?

8 A. Yes.

9 Q. Would you put that into the player, please?

10 A. There is the HAWK for 56.

11 Q. And so this disc -- is your understanding
12 that the serial number of this recorder was 2373?

13 A. Yes.

14 Q. And how do we know that?

15 A. Well, I can go back to USBird.

16 Q. That's okay. Do we know that because
17 that's the name of the file there?

18 A. Yes, that's the name of the file there,
19 yes.

20 Q. Go ahead and open back up the file there.
21 And please bring up the player.exe. And what does
22 player.exe convey to us about the dates and times and
23 lengths of the recordings on this copy of the
24 evidentiary DVD?

25 A. Well, knowing ADS recorders, and looking at

1 this it says 12/30/1899, and the same start and end
2 time, and length of zero, I know that what happened
3 is the clock battery -- there is an onboard clock
4 battery on the ADS recorder, that if it goes dead, it
5 no longer generates a time or a date. So there is
6 negative input to the recorder for that information.
7 So there is a default entry, which they call an epic
8 time, date, and that's the 12/30/1899. And then,
9 because there is no clock running, then, when the
10 metadata is generating, it won't give duration of the
11 record. It will record, it does record, and I can
12 verify this, that it was recording, recorded
13 sessions. You can play them, you can hear them.

14 Q. So if you would play for us recording
15 session number 1. Just start the player.

16 A. (Witness complies.)

17 Q. So we heard that there is a recording there
18 in session number 1?

19 A. Yes.

20 Q. Do we know the length of that recording by
21 what you're seeing on the player?

22 A. Down here, that number there is not
23 relevant to the recording.

24 Q. So is that a: No, we don't know?

25 A. You'd have to sit and listen to it with a

1 stopwatch. And you could do that. It would come to
2 a known time, because --

3 Q. Looking at these sessions, can you tell
4 which of these sessions was created by the person
5 operating it clicking on or off the device?

6 A. Only because there is no flag showing. Can
7 I say, well --

8 Q. Sure. So I think I was asking a yes or no
9 question.

10 A. Yes, I would say, without having that --
11 without listening to each individual one and seeing
12 if there is continuity, I can't from the player, no.

13 Q. Okay.

14 A. I can tell from the flag that something
15 occurred, though, that would indicate a connection,
16 recording.

17 Q. It's my understanding, though, that if
18 there was something that happened besides turning on
19 and off the device, it would be reflected by a flag;
20 is that right?

21 A. Certain things would be reflected. The
22 loss of battery power. And again, the flags, the
23 specific flags provided low battery, power fail, the
24 spanning due to size limit, and other ones that don't
25 appear here and don't apply. The camera loss,

1 because there was no camera used. And then things
2 don't apply because we don't have GPS involved with
3 this device. And then I don't see the yellow flag.

4 Q. So, for instance, if we look at session 13,
5 what does that flag tell us?

6 A. 13 is a red flag, and red flag is a
7 recording with low battery, which is basically the
8 battery lost enough power to run the device, so it
9 stopped recording.

10 Q. To your understanding, are there two
11 different batteries in this HAWK device?

12 A. There are two batteries. There is the
13 battery that runs the clock battery, which is like a
14 small watch cell size of battery. And there is a
15 normal battery that it uses. It has more power to
16 run the recorder.

17 Q. And which one went out?

18 A. The clock battery went bad.

19 Q. All right. Now, did you validate the hash
20 values?

21 A. Yes. Do you want me to do it with USBird
22 as well?

23 Q. No.

24 A. So I have the text from the file, and a
25 copy of the evidence it provides.

1 Q. I think what I'm asking is did you verify
2 the hash values of this disc?

3 A. Yes, I did.

4 Q. And in that verification, what did you
5 find?

6 A. It was a match. These are identical.

7 Q. Does that mean that all of the data that
8 was on the recording device was downloaded to the
9 evidentiary DVD?

10 A. Yes. Based on the performance of USBird
11 verification and the confirmation with the quick
12 hash, this information is what was recorded by the
13 recorder and downloaded from the recorder. It's
14 authentic evidence.

15 Q. Does the player here on the disc help you
16 understand whether the data on the device matches up
17 with the data on the DVD?

18 A. Yes. The data on the device, during
19 recording, it creates a cyclic redundancy check,
20 which is basically a long division problem against
21 every certain block of information. And it records
22 that with the original evidence, and it allows you to
23 go back and see if the solution comes out, if it's
24 been changed or not. If it's been changed, you'll
25 have a failure, you won't have the same solution.

1 And it's built into this computer, it's built into
2 every computer; pretty much every computer uses
3 something like is this to make sure that data is not
4 corrupted.

5 In this case, what's on the ADS recorder, a
6 cyclic redundancy check was created, and that was
7 provided with the evidence. And the player looks at
8 that. And if it doesn't solve correctly, it will
9 give you a "check some error."

10 Q. So is it your understanding that if the
11 data on the device is the exact same as the data on
12 the evidentiary DVD after the download, that that's
13 why we can see what's on the player and listen to the
14 recording?

15 A. It's the only way can you see this
16 evidence, on an ADS USBird player.

17 Q. If they didn't match up --

18 A. You'd have an error; you'd have a check
19 some error, and it wouldn't be able to play.

20 Q. Did you also look at ID60, a disc that was
21 ID60?

22 A. Yes.

23 Q. Would you bring that up?

24 A. So this is the disc on 60. Again, the
25 serial number. This is the player display.

1 Q. So with this DVD, is it possible that the
2 dates and times reflected for start and end for
3 session 1 may not be the exact real world dates and
4 times in which these recordings were made?

5 A. Yes. That's very possible.

6 Q. How is that?

7 A. The date and time can be assigned. Because
8 we deploy these around the world in different time
9 zones, we require that the vendor give us an ability
10 to set a date and time on the device. So prior to
11 deploying the device, the user, usually a tech user,
12 could be a case agent can, using the USBird software,
13 calibrate the date and time on the device with your
14 date and time clock on your computer. And so it's
15 possible that someone did not correct the date and
16 time on the device, or set it deliberately to another
17 date and time. There was nowhere -- we ship these to
18 different field offices, so it may have been on
19 eastern time, or a different time zone before it was
20 sent to Albuquerque and was never changed.

21 Q. So it sounds like the dates and times could
22 be inaccurate based on not setting the device
23 correctly?

24 A. For many reasons, it could be, yes.

25 Q. Now, even if that's true, can you account

1 for the time between recording session 1 and
2 recording session 2?

3 A. I would say, from looking at recording
4 session 1, that ends says 13:50, 13 minutes 50
5 seconds on the 11th, purportedly. And then the next
6 session starts at 12:55 on the 12th. They stopped
7 the recorder, and they turned it back up on the next
8 day.

9 Q. Why does this tell you that?

10 A. Well, I'm looking at the date, 5/11 is when
11 it was ended, session 1, and then starts on 5/12.

12 Q. And are those -- and this -- when I'm
13 looking there at recording session 2, and I see
14 12:55:44 is that hours, minutes, and seconds?

15 A. My understanding that's minutes and
16 seconds. I might have to go back and check.

17 Q. Well --

18 A. The way it's written.

19 Q. Does it tell you anything -- if we're
20 looking at 12:55:44, we look at 12:57:20, and that's
21 a minute and 36 seconds length, displayed on the
22 player. Does that help you?

23 A. Yes, I'm sorry, it's minutes and seconds,
24 and then tenths of seconds.

25 Q. I think that's wrong.

1 A. Okay. I'm looking at 12:55:57.

2 Q. Yeah. So I think the 55 and 57 --

3 A. I'm sorry. Excuse me, it's -- yeah,
4 minutes. So 12 minutes 55 seconds, to -- excuse me
5 55.44 to 57.20, yeah.

6 Q. Is that hours, minutes, and --

7 A. Hours, minutes, seconds, yes.

8 Q. Okay. Thank you. And so did you
9 validate -- using the SHA256 algorithm, did you
10 validate the date on this evidentiary disc?

11 A. I did.

12 Q. And what did that process tell you?

13 A. It was a match; that the hash calculation
14 for the evidentiary disc, when I ran it, compared it
15 to the hash calculation; with quick hash, they
16 matched. It was an identical match.

17 Q. So that means, if the dates and times are
18 off here in this player, they were off when these
19 files were created on the device?

20 A. Yes, correct.

21 Q. All right. Did you also look at disc ID58?

22 A. Yes.

23 Q. And just bring that up, if you will.

24 MR. BECK: For the record, I don't know how
25 it's disclosed to you, but that's how we keep track

1 of things.

2 Q. Is the serial number for this device 0730?

3 A. Yes.

4 Q. And it looks like, when we bring it up in
5 the player, we don't see any warning flags; is that
6 right?

7 A. I see some green flags indicate it's
8 spanned due to the size of the file.

9 Q. And that's -- when you scrolled down,
10 that's from sessions 21 through 34.

11 A. 21, 22, 23, 25, 29, 32, and 34 have green
12 flags. They reached their size limit.

13 Q. Did you do the hash value validation for
14 this disc, ID58?

15 A. Yes.

16 Q. What did that validation tell you?

17 A. Those hash calculations were a match as
18 well.

19 Q. So was all the information, all the data on
20 the device downloaded to this evidentiary DVD in the
21 same --

22 A. Yes. From what was on the recorder, it's
23 identical to what's on this.

24 Q. Okay. And I want to take you back now to
25 the DVD two times ago. You don't have to do anything

1 there. I just want to ask you a question about it.
2 That was the DVD where all the dates said they were
3 in the year 1899. Do you remember that DVD?

4 A. Yes.

5 Q. Did you do anything with that evidentiary
6 DVD to see if you could, in fact, find dates and
7 times of when those recordings were made?

8 A. Yes. In order -- when we have problems
9 with the recorders or recordings because of some
10 error, we take them to the vendor who owns the
11 proprietary software and have the source code. We
12 will have the Los Angeles division EOT take it to the
13 vendor and sit with the technician as they try to
14 access it, and see what they can see.

15 Q. Did that happen with this DVD?

16 A. We did. We sent it back.

17 Q. And what happened?

18 A. They could not recover any data because the
19 clock battery had not provided that data regarding
20 the date and the time.

21 MR. BECK: Thank you, Special Agent
22 Williamson. Nothing further. And just for the
23 record, I couldn't read the handwriting on there.
24 It's actually 1D, not ID for those.

25 MS. JACKS: I'm sorry?

1 MR. BECK: It's 1D. I just read it
2 incorrectly.

3 No further questions.

4 THE COURT: All right. Thank you, Mr.
5 Beck.

6 Ms. Jacks, do you want to start?

7 MS. JACKS: I do. But I'd just like a
8 moment to confer.

9 THE COURT: You may.

10 EXAMINATION

11 BY MS. JACKS:

12 Q. Good afternoon, Agent Williamson.

13 A. Good afternoon.

14 Q. I'm going to start with the easy stuff.
15 First of all, you said you're the program manager for
16 the covert body recording program, right?

17 A. Yes.

18 Q. So, as the program manager, I think you
19 mentioned you're responsible for the acquisition of
20 the devices?

21 A. I'm not directly responsible for the
22 acquisition. Finance division has a protocol in
23 place, through federal law, that governs how we
24 acquire them. These were acquired before I became
25 the program manager.

1 Q. You mean all the ELSUR devices that we're
2 talking about today?

3 A. The contract for their purchase was before
4 I came there.

5 Q. Okay. The testing of the devices is under
6 your authority?

7 A. The testing that we do at Quantico, the
8 limited testing we do, yes.

9 Q. That's to try to make sure that when they
10 go out in the field there is procedures in place that
11 ensure that the devices work as they're supposed to?

12 A. I don't understand your question.

13 Q. Well, what is the testing that you do?

14 A. To make sure that they work; power them up,
15 they actually make a recording and they actually
16 function the way they're supposed to.

17 Q. Okay. And that you can set the date?

18 A. Yes.

19 Q. And that the times reflected on the summary
20 charts that you've shown us today are the actual
21 times?

22 A. That's not set by us. That's set by the
23 operator in the field.

24 Q. What's set by the operator in the field?

25 A. The date and time they're going to use.

1 Like I set a date and the time for a recorder, and
2 they go somewhere else, and they want to use their
3 date and time.

4 Q. Right. I think you explained that. So,
5 for example, if these devices were checked out in
6 Albuquerque, there would be a person in the
7 Albuquerque office that has the responsibility of
8 setting the devices up with the proper date and time?

9 A. I'm not familiar with Albuquerque's
10 procedures.

11 Q. So you don't know if the Albuquerque -- the
12 ELSUR person in Albuquerque or people in Albuquerque
13 are tasked with putting in the date --

14 A. No.

15 Q. -- properly?

16 A. No.

17 Q. So there is not some sort of national
18 standard for how these devices are to be calibrated
19 before they're sent out in the field?

20 A. When you say "national standard," I don't
21 understand that.

22 Q. The standard that you, as the program
23 manager of the covert body recording program, put in
24 place to ensure that when people use these devices
25 they use them right.

1 A. When we teach the tech agents how to use
2 them, we teach them to set the time and date
3 appropriately.

4 Q. Okay. And the tech agents are the people
5 that then would be sent out into the field to manage
6 the ELSUR devices in any particular office?

7 A. They would assist the ELSURs, yes.

8 Q. I'm sorry? They would what?

9 A. They would assist the ELSUR operations
10 technician in how to properly do that, yes.

11 Q. Okay. So the idea would be that they would
12 train the ELSUR operations technician how to set the
13 time and date?

14 A. And we do also provide training to ELSUR
15 operations technicians to do that as well.

16 Q. Okay. Just so that I understand when you
17 say "ELSUR operations technician," that's the person
18 that would be in the FBI field office?

19 A. They are in the FBI field offices, yes.

20 Q. And who is the person that would be sent
21 out there to train them?

22 A. We don't send anyone out to train them.

23 Q. The person that you were talking about, I
24 think that you actually trained in how to set up the
25 devices, what is that person?

1 A. We have regular training of technically
2 trained agents. There is a whole program that does
3 that. And part of their instruction is teach them
4 how to use these devices.

5 Q. Okay. So these would be special agents
6 that are technically trained at Quantico on how to
7 operate the devices?

8 A. Some of their training does occur at
9 Quantico.

10 Q. And then they would be sent out the various
11 field offices to train the ELSUR operations
12 technicians?

13 A. We also run -- that is one thing that can
14 happen. We also have training, not throughout all
15 ELSUR operations technicians. There is a ELSUR
16 operations technician program that provides training
17 at times. And that's a different unit that does
18 that. Not my unit.

19 Q. And so the ELSUR operations technician
20 would go to that training and learn about the
21 devices, and receive some sort of acknowledgment that
22 they had completed that training?

23 A. I would assume so. I don't know. I don't
24 run the program.

25 Q. Okay. I think you said you were

1 responsible for supervising the maintenance of the
2 ELSUR devices; is that right?

3 A. To the degree that we can do that at
4 Quantico, yes.

5 Q. Okay. So you supervise the maintenance of
6 the devices that are back in Virginia; is that right?

7 A. Yes.

8 Q. But you don't have anything to do with the
9 maintenance of the devices that are in the other
10 field offices?

11 A. We provide guidance, and we ask that
12 certain things be done. But that's part of what is
13 provided the technically trained agents. But they're
14 not the ones always holding the devices.

15 Q. I'm sorry? They're not the ones --

16 A. I mean, the tech agents are -- some of the
17 people, ELSUR operations technicians also; it depends
18 on the field office.

19 Q. Is there some sort of requirement that a
20 field office have somebody that's been through a
21 specific training that you developed?

22 A. Yes.

23 Q. And what that is requirement, or what are
24 those requirements?

25 A. They attend the tech training, which is in

1 a different unit. And they attend the ELSUR
2 operations training, which is a different unit as
3 well.

4 Q. And there has to be, what, one person in
5 each field office that has accomplished those two
6 things?

7 A. I don't know how many people are required.

8 Q. In connection with your job as the program
9 manager of the covert body recording program, do you
10 provide any sort of instruction or standards on how
11 the devices are to be used in the field?

12 A. There are -- there is training provided in
13 the TTA program that the TTAs are given.

14 Q. The TTAs are the technical training agents?

15 A. Technically trained agents, yes.

16 Q. And are the technically trained agents
17 given instructions on how a person that's given the
18 ELSUR device is supposed to be educated with respect
19 to its operation?

20 A. I don't understand what you mean by that.

21 Q. Well, what I mean is, like, are they told
22 something like: When you give this device to
23 somebody that you're going to ask to use it in a
24 subreptitious fashion, they should be instructed to
25 leave it on during the entire conversation that's at

1 issue?

2 A. That's not something you would teach
3 everybody to do.

4 Q. Okay. Is there any requirement or any
5 training that when you're providing this ELSUR device
6 to somebody who is going to use it in the field, they
7 should keep it in their presence for the entire time
8 of the conversations they're recording?

9 A. No.

10 Q. Is the information that these technically
11 trained agents are trained on published somewhere?

12 A. Do you mean are there syllabi that exist?

13 Q. Correct, somewhere within the FBI.

14 A. Yes.

15 Q. And where is that?

16 A. At the Technical Operations Development
17 Unit, which is in charge of the TTAs.

18 Q. And they keep records of what sort of
19 topics and things these technically trained agents
20 are educated about?

21 A. Yes.

22 Q. Now, Mr. Beck asked you some questions
23 about the ELSUR device actually terminating a session
24 and starting a new session on its own. Do you recall
25 those questions?

1 A. It doesn't terminate a session and start a
2 new session by itself.

3 Q. Okay. Well --

4 A. Unless you say it's spanning the limit, you
5 mean.

6 Q. That's exactly where I was going.

7 A. Yeah. With an excessive size, it will
8 create a new session, yes.

9 Q. Okay. And the ELSUR device does that on
10 its own, without any input from the operator?

11 A. The device does it automatically.

12 Q. And you're saying that happens when the
13 recording reaches a certain length?

14 A. Yes.

15 Q. And is there some sort of set length on the
16 recording?

17 A. No. It's dependent upon each device's
18 capacity, and when it was -- different devices, my
19 understanding, have different lengths. And I don't
20 know them off the top of my head. I'd have to go
21 look them up.

22 Q. Within the same device, is there a
23 consistent length that is -- then causes a session to
24 terminate and begin a new session?

25 A. Well, the models have different series. So

1 the HAWK8 had multiple models, or variance. So I
2 don't know if they changed or they are the same.

3 Q. What about within a particular HAWK device,
4 within -- when we're looking at these folders here,
5 that are displayed -- let's look at the one that's on
6 the screen. You pulled up the recordings that are
7 designated on HAWK file 0730, right?

8 A. This one here?

9 Q. Yes. Does that identify a particular
10 individual HAWK device?

11 A. Yes. The HAWK serial number at the top,
12 0730.

13 Q. Okay. And with respect to a particular
14 HAWK device; for example, this one, 0730, would there
15 be a distinct length of time that would then cause a
16 session to terminate and start a new session?

17 A. It wouldn't be time. And again, you're
18 looking at a video -- audio-video recorded, and so
19 it's data; it's based on data.

20 Q. It's based on the amount of data?

21 A. Yes.

22 Q. So is there, within a device, let's say the
23 amount of data is one gigabyte. If the amount of
24 data exceeds one gigabyte, would it then
25 automatically reset every time?

1 A. It's much lower than that.

2 Q. Okay. Then you pick the number.

3 A. I don't know it off the top of my head.

4 I'd have to go find out.

5 Q. But do you understand the tenor of my
6 question?

7 A. Yes.

8 Q. I mean, is it like every time when it hits
9 that limit --

10 A. Yes.

11 Q. -- it would then reset?

12 A. When it hits that limit, it will create a
13 new session. So it can fit all that onto a single
14 evidentiary disc.

15 Q. And on a single recording device that would
16 be consistent over time, according to you?

17 A. It should be, yes.

18 Q. Now, I think that the device that we're
19 looking at here, you said that has audio and video?

20 A. Excuse me, yeah. In this case, no, it
21 doesn't. It has no video at the top, and it has
22 stereo, so it's just audio for this one.

23 Q. Okay. So if a device like this device,
24 0730, is simply recording audio, would you expect it
25 to start a new session after a particular amount of

1 time in a consistent fashion?

2 A. No.

3 Q. Okay. And why is that?

4 A. Because it's based on data, not time.

5 Q. So it would depend on the amount of
6 talking?

7 A. Or noise, how much information is coming
8 through the microphone.

9 Q. So I want to talk to you about the first
10 evidentiary disc that you discussed. And,
11 unfortunately, we don't have them identified the same
12 as you. But it was the first one that you pulled
13 up -- I think it had -- it was 1168. And I think you
14 had a total of 11 sessions. The file was 1168.

15 A. Let me see.

16 MS. JACKS: Do you know which one it was?

17 MR. BECK: It was 1D55.

18 A. Do you want me to put that one on?

19 Q. Please. Yeah, that's the one. Thanks.

20 So, just to reiterate the last -- I guess
21 the last series of questions. If you look at session
22 8, that recorded 21 minutes 55 seconds of audio; is
23 that right?

24 A. Yes. The length shows 21 minutes 55
25 seconds.

1 Q. Then the green flag shows that the session
2 was terminated, and a new session was automatically
3 started by the device?

4 A. Yes.

5 Q. Because the size limit was exceeded?

6 A. Yes.

7 Q. And then the second part of that same
8 conversation lasted about 47 seconds; is that right?

9 A. Yes.

10 Q. Okay. If you look at session 6, how much
11 time did that session go for?

12 A. It says 37 minutes 14 seconds.

13 Q. Okay. And does the software show any
14 indication that that session was broken into pieces?

15 A. No, it shows that it was turned off.

16 Q. It shows that the operator of the device
17 turned it off?

18 A. Yes.

19 Q. After 37 minutes and 14 seconds?

20 A. Yes.

21 Q. With respect to the dates on this series of
22 recordings, do you know on this particular one
23 whether the recordings occurred on the dates as
24 indicated?

25 A. I have no idea.

1 Q. No idea?

2 A. None.

3 Q. And the only way you would know that, or
4 I'm sorry, the only way you could determine if the
5 dates were correct is to know when the device was
6 provided to the person operating it?

7 A. No. You'd have to ask the person who
8 operated it when they deployed it.

9 Q. And what about the ELSUR operations
10 technician who was responsible for the deployment of
11 this device?

12 A. The ELSUR operations technician is not
13 responsible for the deployment of the device.

14 Q. They're responsible for setting up the
15 device and providing it to the agent, right?

16 A. No.

17 Q. What are they responsible for?

18 A. For receiving the device that has the
19 evidence on it, and downloading the evidence.

20 Q. Okay. Who is responsible for preparing the
21 device to be able to go out in the field?

22 A. In most field offices technically trained
23 agents provide technical equipment to case agents to
24 use.

25 Q. So the case agent, the person that was

1 actually going to provide the device to somebody he
2 was working with, it would be his responsibility to
3 make sure the device was set appropriately?

4 A. I can't speak to Albuquerque, what they did
5 or did not do.

6 Q. Is that a practice at least in some areas
7 that you're aware of?

8 A. Generally, technically trained agents will
9 provide equipment and instruction on the equipment to
10 case agents, yes.

11 Q. And then, generally, the case agent would
12 be responsible for preparing the device for
13 deployment?

14 A. No. Depends. Some offices rely more on
15 the tech agent to do that. It depends on the office
16 and the scenario.

17 Q. So we'd have to talk to somebody from
18 Albuquerque?

19 A. Yes.

20 Q. Now, I think you were asked some questions
21 by Mr. Beck about DVD 1D56. And that was the one
22 that showed that the recordings were made on December
23 30, 1899, and were zero seconds?

24 A. Wrong date and time, obviously.

25 Q. Right. And you're attributing that to the

1 clock battery being dead or defective in some manner?

2 A. The clock battery was dead, and that's why
3 it happened.

4 Q. But you've confirmed that there are
5 recordings on that evidentiary DVD?

6 A. Yes. We played one here a minute ago.

7 Q. And I think you acknowledge that at the
8 time that that device was downloaded onto the
9 evidentiary DVD, 1D56, it was apparent from the
10 download that there had some sort of malfunction of
11 the clock system?

12 A. That would be immediately apparent when you
13 were to look at the recorder in USBird.

14 Q. Okay. You testified that that actual ELSUR
15 device was sent back to the vendor. Am I
16 understanding you correctly?

17 A. No. The copy of the evidence was sent to
18 the vendor to see if they could extract any
19 information.

20 Q. So a copy of that DVD was sent to the
21 vendor?

22 A. Yes. A copy was sent to LA field office.
23 And the EOT took it to the vendor to examine it.

24 Q. What about the device itself? Was the
25 device itself ever sent back to the vendor to see if

1 there was information on that that wasn't transmitted
2 to the DVD?

3 A. If the device was not erased, there would
4 still be those sessions on the device. If you erase
5 the device, then there is nothing on the device.

6 Q. Okay. So my question is -- and maybe you
7 don't know -- if that device, the actual ELSUR
8 device, was that sent back to the vendor?

9 A. There would be no point in doing that, if
10 it was erased. If it was not erased, that would be
11 different.

12 Q. Well, do you know if the device, prior to
13 being erased, was sent back to the vendor because --

14 A. I don't think it was, no. It was not to my
15 knowledge, no.

16 Q. Okay. Are there some sort of -- you're
17 obviously aware that something was sent back to the
18 vendor. Is that a notification that somebody makes
19 to you by phone, or is that something that you find
20 out about through some sort of written communication?

21 A. It can be by phone. We usually send an
22 email saying: Would you take something back? But
23 it's phone or email. So the response could be a
24 verbal response; the response could be an email
25 response.

1 Q. You mean the response from the vendor?

2 A. This specific time?

3 Q. Yes.

4 A. I had an email back.

5 Q. Okay. So there is a record of some sort of
6 written communication between you and the vendor
7 regarding this particular evidentiary DVD?

8 A. It was between my unit and the LA field
9 office's EOT, who contacted the vendor and took the
10 copy of the disc to the vendor.

11 Q. And when the vendor responded, do they just
12 respond informally in an email, or was there some
13 sort of forensic report generated?

14 A. I didn't get a response from the vendor. I
15 think they spoke directly to LA and I got a response
16 from LA. Actually, my ET got an response from LA.

17 Q. What's your ET?

18 A. Electronics technician.

19 Q. And, essentially, the response was there is
20 no additional information on the copy of the DVD that
21 was created?

22 A. There is no way to find date and time from
23 that at all. And all they could say was it was an
24 authentic recording. But there is no metadata
25 showing date and time because the clock battery had

1 failed.

2 Q. And did the vendor ask whether you could
3 provide the original ELSUR device?

4 A. No.

5 (Mr. Adams entered the courtroom.)

6 Q. Apart from this particular DVD recording,
7 or this particular ELSUR device, was anything else
8 sent back to the vendor to ask about missing or
9 incorrect information in connection this case?

10 A. No.

11 Q. So there was just that one DVD?

12 A. That was the one DVD we sent back.

13 Q. And based on your knowledge, who is
14 responsible for informing the operator of the device
15 the conditions or how it's to be utilized in the
16 field, if anybody?

17 A. Technically trained agents have the
18 responsibility for teaching the case agents how to
19 use the equipment.

20 MS. JACKS: If I could just have a moment?

21 THE COURT: Certainly.

22 MS. SIRIGNANO: Your Honor, good afternoon.

23 THE COURT: Ms. Sirignano.

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EXAMINATION

BY MS. SIRIGNANO:

Q. Good afternoon, Agent.

Agent, I'd like to talk a little bit about training first, like Ms. Jacks started out with, and then go into the device a little bit.

So who did you speak to before you came here to Las Cruces to prepare for your testimony?

A. Mr. Beck.

Q. Assistant United States Attorney Matt Beck?

A. Yes.

Q. And how many times did you talk with him?

A. Less than a dozen times. In terms of on the phone formally?

Q. Well, any contact with him.

A. I can't recall. I'd have to go back and get you that information exactly.

Q. You'd say less than a dozen times?

A. If you include emails, more than a dozen times.

Q. What was substance of these communication?

A. When to appear, when come out.

Q. Scheduling, or --

A. He sent me a copy of what he submitted today, a rough draft, to share with the attorneys at

1 OTD and myself.

2 Q. The motion to reconsider?

3 A. Yes, ma'am.

4 Q. Did you proofread it?

5 A. Not entirely, no.

6 Q. Well, did you proofread any of it?

7 A. Some of it.

8 Q. What did you proofread? What did you
9 change?

10 A. It referred to -- and again, he already
11 corrected it. He had the wrong name or wrong model
12 number of the recorder.

13 Q. Wrong model number of what?

14 A. The recorder. He had a HAWK3 instead of a
15 HAWK8. It was typo.

16 Q. There were two devices in this case, right?

17 A. I'm not familiar off the top of my head how
18 many devices there were. I know of a HAWK and a
19 RAVEN, and I think an EAGLE as well.

20 Q. So there could have been three?

21 A. I don't know. You'll have to ask the case
22 agents.

23 Q. What was the extent of your review of the
24 actual recordings and the devices before you came
25 here?

1 A. I didn't view any of the devices.

2 Q. I was just going to ask you to let me
3 please try to finish my sentence, because Ms. Bean
4 here is going to get upset with us if you step over
5 me a little bit. Okay?

6 A. Okay.

7 Q. I'll give as much time as you need to
8 answer. I just don't want to get Ms. Bean upset with
9 us.

10 So you did not review the devices?

11 A. No, I did not inspect the devices.

12 Q. Where are these devices?

13 A. I don't know.

14 THE COURT: Ms. Sirignano, would this be a
15 good time for us to take our afternoon break?

16 MS. SIRIGNANO: It would, Your Honor.
17 Thank you.

18 THE COURT: All right. We'll be in recess
19 for about 15 minutes.

20 (The Court stood in recess.)

21 THE COURT: All right. It looks to me like
22 everybody has got an attorney. Everybody look around
23 to make sure everybody has got an attorney.

24 All right. Mr. Adams, you're now here?

25 MR. ADAMS: I am, Your Honor.

1 THE COURT: Good afternoon to you,
2 Mr. Adams.

3 Ms. Strickland, I think you walked in.
4 We'll note your appearance.

5 I've been told that Ms. Fox-Young is not
6 going to be on the telephone for the rest of the
7 afternoon.

8 Is there any other adjustments we need to
9 make?

10 MR. CASTLE: Your Honor, this is Jim
11 Castle. I've been on the phone since the hearing
12 began.

13 THE COURT: Oh, okay.

14 MR. CASTLE: I didn't think the Court
15 wanted me to enter my appearance since it wasn't a
16 change from last week.

17 THE COURT: All right. Mr. Castle, good
18 afternoon to you.

19 All right. Mr. Williamson, I'll remind you
20 that you're still under oath.

21 THE WITNESS: Sure.

22 THE COURT: Ms. Sirignano, if you wish to
23 cross-examine Mr. Williamson, you may continue.

24 MS. SIRIGNANO: Thank you, Your Honor.

25 THE COURT: Ms. Sirignano.

1 BY MS. SIRIGNANO:

2 Q. Agent Williamson, so I believe right before
3 the break I asked you if you reviewed the devices in
4 issue before --

5 A. No, I did not.

6 Q. Okay. And then I asked you where these
7 devices are.

8 A. I don't know.

9 Q. Presumably, they're in the ELSUR storage
10 unit in Albuquerque?

11 A. You'd have to ask the Albuquerque office.

12 Q. So you're the supervisory Special Agent for
13 nationwide FBI on covert recording devices; correct?

14 A. Yes.

15 Q. So you have a point of contact in each FBI
16 field division on these devices?

17 A. Yes.

18 Q. And who is the point of contact for
19 Albuquerque's division that you talk with routinely
20 about your program and these devices?

21 A. It's a technically trained agent, Special
22 Agent Hugo Nanez.

23 Q. I'm sorry? Hugh?

24 A. Hugo Nanez.

25 Q. Hugo N-A-N-E-Z?

1 A. Yes, ma'am.

2 Q. So when you were talking with Ms. Jacks
3 earlier, he would be the technically trained agent
4 that is in charge of these ELSUR devices maintained
5 in Albuquerque; correct?

6 A. Yes.

7 Q. And what's his staff look like, in the
8 ELSUR unit, or in the technically trained agent unit?

9 A. I can't tell you. I don't know. You'd
10 have to ask Albuquerque.

11 Q. You don't have any idea of how many
12 personnel are in the Albuquerque covert recording
13 unit?

14 A. It's not a covert recording unit.

15 Q. What is it?

16 A. They're technically trained agents assigned
17 to the Albuquerque office.

18 Q. How many are in Albuquerque?

19 A. I'd have to look it up.

20 Q. More than five?

21 A. Maybe.

22 Q. More than 10?

23 A. I don't think so.

24 Q. So somewhere between five and 10
25 technically trained agents in Albuquerque; correct?

1 A. I'd have to look it up.

2 Q. But you just said it's less than 10, but
3 more than five, somewhere like that, right?

4 A. Probably.

5 Q. And then, within this technically trained
6 agent group, they work with the ELSUR unit; correct?

7 A. They do.

8 Q. And tell us what an ELSUR unit is.

9 A. Where is it?

10 Q. No. What it is.

11 A. It's not a unit, but there are ELSUR
12 operations technicians assigned to Albuquerque whose
13 responsibility it is to receive evidence and enter it
14 into evidentiary storage.

15 Q. So it's like an evidence clerk, but just
16 for ELSUR-type evidence; correct?

17 A. They handle all evidence.

18 Q. Recorded evidence or physical evidence?

19 A. Again, you'd have to talk specifically to
20 the Albuquerque office. Because every field office
21 is slightly different.

22 Q. Slightly different. But what's the MIOG
23 stand for, M-I-O-G, FBI verbiage?

24 A. Memory of Investigative Operational
25 Guidelines?

1 Q. Correct. And what is the DIOG?

2 A. I can't recall off the top of my head right
3 now. But there was no talk to this, as far as I
4 know, the specific who is in what room, and what they
5 do.

6 Q. Oh, no, I'm not asking specifically about
7 who is in what room and what they do. I'm trying to
8 get a general overview. Since you are the program
9 manager for all technically trained agents that
10 handle the covert recording throughout United States,
11 you can tell us exactly what the MIOG or the DIOG or
12 whatever other policy or procedure document is out
13 there to go over what each technically trained agent
14 and ELSUR clerk has to follow; correct, since you're
15 the supervisor?

16 A. No. I don't know all the things that the
17 ELSUR operations techs have to do. That's not my
18 program.

19 Q. Okay. Where would we find the ELSUR
20 technicians' job description, responsibilities, and
21 what they do?

22 A. What unit in the FBI?

23 Q. Sure. Let's start with that?

24 A. The ELSUR Program Management Unit.

25 Q. And who is in charge of that?

1 A. The Unit Chief is Kris Moxley, Kristen
2 Moxley.

3 Q. And she's --

4 A. He is Kristen, K-R-I-S-T-E-N, M-O-X-L-E-Y,
5 he's the unit chief for the ELSUR program management
6 unit.

7 Q. And is he in Quantico or D.C.?

8 A. Quantico.

9 Q. Okay. Thank you.

10 And so we've got this ELSUR program. Their
11 responsibilities are outlined in the new DIOG or the
12 MIOG or another policy?

13 A. There is the TIP policy.

14 Q. Oh. What's the TIP policy?

15 A. Technical Investigative Program policy.

16 Q. When was this written?

17 A. I can't recall.

18 Q. Is this a public policy?

19 A. I don't think so.

20 Q. So everyone, an ELSUR clerk, or anybody
21 working in the ELSUR unit, would have to abide by the
22 TIP policy; correct?

23 A. You'd have to ask EPMU. I don't know.

24 Q. EPMU is what?

25 A. ELSUR Program Management Unit.

1 Q. Okay. So let's get to your unit. You're
2 the Supervisory Special Agent. Are you the unit
3 chief?

4 A. I'm the acting unit chief.

5 Q. Acting unit chief, okay. Of the covert
6 recording devices unit?

7 A. The audio surveillance unit.

8 Q. Audio surveillance unit. Okay.

9 And how many technically trained agents in
10 Albuquerque report to you? Just the one?

11 A. None.

12 Q. None. They report to Albuquerque division?

13 A. Yes.

14 Q. And what policy do you abide by in the
15 audio surveillance unit and in each division across
16 the FBI, including Albuquerque, regarding covert
17 recordings?

18 A. The TIP policy.

19 Q. The TIP policy. Do you have a copy of that
20 policy with you here today?

21 A. No.

22 Q. Why not?

23 A. It's something I don't carry around with
24 me, and I was not asked to bring it. And I don't
25 know if I'd be allowed to show it.

1 Q. Okay. So since all agents, including
2 yourself, acting unit chief -- maybe we can talk a
3 little bit about this policy and standards, because
4 within the policy are the standards of operating
5 these devices; correct?

6 A. No.

7 Q. Where would the standards be?

8 A. They are what we follow in accordance with
9 what, how the devices are used and work. It's not
10 something we have written down as a standard how to
11 use the devices, because they're used in so many
12 myriads of ways.

13 Q. I don't understand that answer.

14 A. When you say how do you use them, I mean we
15 have instruction we give to the technically trained
16 agents. And there is a syllabus of instructions.
17 And there is user manuals from the vendor.

18 Q. Okay. I'm going to start with the user
19 manuals of the vendor.

20 MS. SIRIGNANO: May I approach, Your Honor?

21 THE COURT: You may.

22 Q. Agent, I apologize, but I don't have a hard
23 copy of this reg yet. What does this look like to
24 you?

25 A. It looks like a user's manual.

1 Q. Which user's manual?

2 A. I don't know.

3 Q. Well, can you read from it, please, sir,
4 the first page?

5 A. USBird HAWK, FALCON, EAGLE8A, model 8 flex
6 8C audio recorders user's manual, Windows version.

7 Q. So looking at this first page -- and feel
8 free to scroll down, especially down to page 32.
9 What do you think this purports to be?

10 A. A user's manual for the devices.

11 Q. Which devices?

12 MR. BECK: Your Honor, I'm going to object.
13 It's outside the scope and relevance. I don't see
14 how this ties back to his testimony on direct.

15 THE COURT: What are you trying to --
16 explain to me what you're trying to do here, Ms.
17 Sirignano.

18 MS. SIRIGNANO: Well, Your Honor, I believe
19 the testimony on direct was that the Government
20 didn't want any of this proprietary information
21 regarding the HAWK and the EAGLE, and the -- I can't
22 remember the third device name. And they didn't want
23 to provide it to the defense and the defense expert
24 because it's proprietary, and it had national
25 security concerns.

1 But, as you can see, Judge -- and I'll
2 offer a hard copy of this one when Ms. Gilbert comes
3 back and gets me a hard copy. It's the actual user's
4 manual of these devices. And also there is at least
5 one photograph of one of the devices that is here in
6 the public record.

7 Thank you. Let's do it this way --

8 THE COURT: Well, I guess at this point,
9 Mr. Beck, one of the problems I'm having, I'm trying
10 to figure out what it is they want that they don't
11 have. So I need to probably give her a little
12 leeway, because I'm not sure what the ballgame is
13 right now.

14 MR. BECK: Yeah. And I agree, I'm not
15 either. I don't know that they asked for a user
16 manual of this device. And we didn't provide one.
17 So, I guess, if they want to put this in the record,
18 it seems to me this would be a little bit more
19 argument than cross-examination of Special Agent
20 Williamson.

21 THE COURT: Well, I'm going to allow it,
22 because -- and overrule the objection -- because I
23 guess we could have had argument before we had the
24 witness. But it may be that the witness has taken
25 care of a lot of concerns of the defendants. I don't

1 know. But anyway, I'll allow it. Overruled.

2 MS. SIRIGNANO: And, Judge, I might be able
3 to streamline this thing. The reason why I think
4 we're going through this exercise is, you know, how
5 can we learn the person can turn these devices on and
6 off, and whether or not someone can actually break
7 into these devices. And that was the purpose of
8 Ms. Jacks' letter that was filed at Document 1459 on
9 November 20. Really, that's bottom line here.

10 And I can keep going on until 5:30, as you
11 know. But I'm happy to streamline this thing, if we
12 can get access to it. Get -- Mr. Bly is here. He
13 can take a look at it. The photograph of it is in
14 the public record, as is the user's manual. And so
15 I'm having a very difficult time trying to figure out
16 why the CHSs have had access to it, and the defense
17 cannot at this point.

18 THE COURT: Well, I guess my sort of
19 reaction to everything is that this looks like a
20 fishing expedition. I'm just not seeing that y'all
21 are pointing out -- the defendants keep pointing out
22 some information, either Brady or Rule 16 or Giglio
23 that they're going to get. It just seems to me it's
24 sort of general discovery. So I guess I'm not
25 inclined to go much further than where we are now.

1 MS. SIRIGNANO: I'll proceed, Your Honor.
2 If you'd like, I can argue about it not being a
3 fishing expedition. I could keep going or I can take
4 some argument now, if you'd like.

5 THE COURT: It's your call. I'm just kind
6 of telling you where I'm leaning right now.

7 MS. SIRIGNANO: I'll proceed, Your Honor.
8 Thank you.

9 May I approach?

10 THE COURT: You may.

11 BY MS. SIRIGNANO:

12 Q. So Agent, does this reflect the digital PDF
13 that I showed you previously?

14 A. It looks to be the same, yes.

15 Q. What did you say it was?

16 A. It says it's a USBird user's manual.

17 Q. And the date of it?

18 A. It says March 2, 2007.

19 MS. SIRIGNANO: Your Honor, I'd like to
20 move to admit Garcia, Chris, Exhibit B at this time?

21 THE COURT: Any objection?

22 MR. BECK: No objection, Your Honor.

23 THE COURT: All right. Defendant Chris
24 Garcia's Exhibit B will be admitted into evidence.

25 Q. And Agent, look at the second page, titled

1 Section 6. What is that?

2 A. Section 6, it says HAWK. It describes the
3 HAWK recorders.

4 Q. And is that an actual HAWK recorder on the
5 bottom of the page?

6 A. It appears to be, yes.

7 Q. Consistent with what the FBI was using in
8 this case?

9 A. No.

10 Q. It's different?

11 A. Yes.

12 Q. How so?

13 MR. BECK: Objection, Your Honor. I think
14 this is getting into law enforcement sensitive
15 material that I'm going to object to on that basis.
16 I've got my marching orders.

17 THE COURT: Let me ask Mr. Williamson a
18 question: Would you agree with that; that the answer
19 here that Ms. Sirignano is requesting is going to
20 reveal some confidential information?

21 THE WITNESS: It would be information I'd
22 rather not share, yes, Your Honor.

23 THE COURT: And, Ms. Sirignano, precisely
24 what are you asking here?

25 MS. SIRIGNANO: I'm trying to determine

1 between the device in this photograph, and if there
2 is a difference between the FBI device. And I could
3 make the question more specific: Is that the
4 configuration of the on and off switch on the device
5 that was used in this case?

6 THE COURT: Is that still confidential
7 information?

8 THE WITNESS: No, I can share that
9 information.

10 THE COURT: Okay. Do you have any problem
11 with that then, Mr. Beck?

12 MR. BECK: I do, Your Honor. And I mean,
13 you have his answer, so I probably know where you're
14 going to go on this. But my understanding is that's
15 the purpose of holding this hearing, because we're
16 looking for what information the defendants need or
17 are entitled to under Rule 16, Brady, or Giglio, and
18 which they don't have provided to them through either
19 the facts or what Agent Williamson has already
20 testified to. And so certainly it has an on and off
21 device. It's probative. We provided that
22 information. What the on and off button looks like
23 is not helpful to their defense. It's not Brady,
24 Rule 16, or Giglio. And it's treading upon law
25 enforcement sensitive information. So that we're

1 having this hearing, I don't think, allows them to
2 get into the discovery that we're trying to prevent
3 by having this hearing.

4 THE COURT: Well, I'm going to sustain the
5 objection. And you can make an argument for that
6 information when we get to the argument side.

7 MS. SIRIGNANO: Thank you, Your Honor.

8 THE COURT: Ms. Sirignano.

9 BY MS. SIRIGNANO:

10 Q. Agent, can you please identify this third
11 page?

12 A. It says it's an EAGLE8A and describes an
13 EAGLE8A.

14 Q. And you testified earlier that the EAGLE8A
15 was used in this FBI case as well; correct?

16 A. I think there was an EAGLE involved. I'd
17 have to check with the case agents to make sure.

18 Q. Was your testimony you thought it was
19 involved, earlier, or it was involved?

20 A. My understanding, there was one involved.

21 Q. And is that a picture of the EAGLE8A in
22 Figure 6.2 of this document?

23 A. Of the type that was used?

24 Q. No, I didn't ask that question. I said is
25 this a picture of the EAGLE8A?

1 A. It is a picture of an EAGLE8A, yes.

2 Q. Does law enforcement or the FBI
3 specifically have a different user's manual than the
4 one I've shown you here today?

5 A. That is dated 2007.

6 Q. It is.

7 A. And that is not a manual that I have or
8 that we use, that I'm familiar with. I might have a
9 copy of it somewhere from a long time ago.

10 Q. And your user's manual is dated what?

11 A. I'd have to go back and look and see.

12 Q. So, ostensibly, there is a later version of
13 the user's manual that I found on the internet?

14 A. Are there later ones on the internet?

15 Q. No. I asked you -- there is a later
16 user's manual for these three devices?

17 A. Yes.

18 Q. And you don't know the date of them?

19 A. No, I do not.

20 Q. But the technology and the graphics should
21 be somewhat similar; correct?

22 A. Somewhat similar. The technology, yes,
23 somewhat similar.

24 Q. Were you able to review the letter that
25 Ms. Jacks wrote and filed to the prosecutors in this

1 case?

2 A. No.

3 Q. You did not review Document 1459?

4 A. I'm not familiar with it.

5 Q. What did you review prior to you coming to
6 testify today?

7 A. Specifically, I looked at certain DVDs that
8 were provided to me, and checked the authenticity of
9 them. And I looked very briefly at the motion. But
10 I didn't understand it because I'm not a lawyer.

11 Q. Thank you.

12 So those DVDs are the ones that you and Mr.
13 Beck talked about earlier; correct?

14 A. Yes.

15 Q. Okay. So we were provided copies of these
16 recordings.

17 May I approach?

18 THE COURT: You may.

19 Q. Agent, I'm providing you what's been marked
20 Garcia, Chris, Exhibit A. Can you take a look at
21 these screen shots for me. And I'll ask you a couple
22 of questions. Do they look familiar to you?

23 A. I'd have to compare them to the screen
24 shots for the actual DVDs. They're the same serial
25 numbers.

1 Q. Are you saying they are the same serial
2 numbers?

3 A. I remember the serial numbers are matched.
4 But I'd have to actually look at the screen to
5 compare my Bird player to this, to see if they're the
6 same.

7 MS. SIRIGNANO: Your Honor, may I have a
8 moment?

9 THE COURT: You may.

10 Q. Agent, can you tell us what a 1E number is?

11 A. A 1E number?

12 Q. Yes.

13 A. As in evidence?

14 Q. Yes.

15 A. I don't deal with evidence much. It refers
16 to the piece of evidence, I think.

17 Q. Well, you testified about a 1E56; correct,
18 and a 1E60?

19 A. A 1D. I'm sorry, 1D.

20 Q. 1D, as in dog?

21 A. 1D, as in dog, yes. I have a copy of 1D55,
22 56, 58, and 60 here.

23 Q. Now, do you know if those numbers were
24 numbers that were produced to the defense in the
25 Government production?

1 A. I don't know.

2 Q. And on the top of that exhibit that I just
3 gave you, in the handwriting, can you see what it
4 says on the tops of those pages?

5 A. DVD 14, DVD 15.

6 Q. Correct. Going all the way to what?

7 A. It goes up to 16, 17, 17 page 2, DVD 19,
8 20, 21, 22, 23, 24, and 24 page 2.

9 Q. 24 page 2. And based on that screen shot
10 of the program that you looked at earlier, is the 1D
11 number on the front of those, or anywhere on those
12 documents?

13 A. No.

14 Q. So you specifically referred to 1D55, 56,
15 58, and 60. And I'm going to refer to DVDs 14
16 through 24 page 2. Is that a yes?

17 A. I understand.

18 Q. Yes.

19 MS. SIRIGNANO: Your Honor, I'd like to the
20 move to admit Chris Garcia, I believe that's Exhibit

21 A.

22 THE COURT: Any objection?

23 MR. BECK: No objection, Your Honor.

24 THE COURT: All right. Anybody else have
25 an objection? Not hearing any, Chris Garcia's

1 Exhibit A will be admitted into evidence.

2 Q. Okay. So you specifically talked about the
3 ELSUR clerk downloading these recordings into the
4 software program; correct?

5 A. The ELSUR clerks use the USBird software to
6 download the data on the recorder into the original
7 evidence DVD.

8 Q. And the original evidence CD or DVD?

9 A. I think it would be a DVD or a CD. It
10 depends upon how large the file is. I think DVDs are
11 used because they contain more information.

12 Q. Okay. And this was what you consider the
13 original evidence before the recording device is --
14 the data is either deleted or it's wiped clean;
15 correct?

16 A. The first download from the recorder is the
17 original evidence.

18 Q. Where is that maintained?

19 A. It should be maintained in the ELSUR
20 storage room.

21 Q. And the ELSUR clerk would put together the
22 original CD or DVD depending on the size, and then
23 they create the chain of custody form and the
24 identification bar code for each download?

25 A. They would; yes, they would.

1 Q. And so this piece of electronic or digital
2 evidence, the first download is treated just like a
3 blood sample or a firearm or any piece of physical
4 evidence in terms of maintenance of that original
5 evidence; correct?

6 A. Yes.

7 Q. And what policy do these ELSUR clerks use
8 to maintain this evidence?

9 A. I don't know.

10 Q. What policy do the technically trained
11 agents use to maintain this evidence?

12 A. They don't.

13 Q. They don't. So I believe your testimony
14 earlier was that the technically trained agents check
15 these devices out; correct?

16 A. It depends on the field officer.

17 Q. And in Albuquerque who checks it out? The
18 technically trained agent or the case agent?

19 A. I don't know. You'd have to ask the
20 Albuquerque agents.

21 Q. So you're saying here today that you don't
22 know if it was Mr. Acee or one of the technically
23 trained agents that checked any of these devices out
24 for this case?

25 A. That's correct.

1 Q. And so, presumably, whoever checked out the
2 device would have looked at the device before they
3 checked it out; correct?

4 A. One would presume.

5 Q. It's probably part of the policy; correct?

6 A. People who are going to use the device,
7 before they deploy it, should check in USBird to see,
8 make sure it functions, yes.

9 Q. Correct, because it's going to be used as
10 evidence one day in trial; correct?

11 A. Not the USBird. But it will collect
12 evidence. To make it work -- make sure it works.

13 Q. I'm talking about the actual device itself
14 that collects the original evidence. That evidence
15 would eventually be used in court someday?

16 A. What the recorder records would.

17 Q. The original evidence.

18 A. It was downloaded, yes.

19 Q. Okay. So we're on the same page here.

20 So either the case agent or the technically
21 trained agent, presumably, pursuant to the FBI's
22 policy, would look at the device before deploying it?

23 A. The agents are trained they should check
24 the devices, or somebody should check the devices
25 before they're deploying them.

1 Q. And that's pursuant to the policies that
2 you were talking about, instructions on how to use
3 these devices, the syllabus of the instruction, and
4 the user's manuals; correct?

5 A. We teach them in their training how to use
6 the equipment. So the syllabi includes that. The
7 TIP policy doesn't specifically state it. It just
8 says generically who is in charge of the equipment.
9 It doesn't go into that much detail on the TIP
10 policy.

11 Q. Okay. And there is a log that each
12 technically trained agent or case agent would have to
13 sign when they check out a specific device; correct?

14 A. It would depend upon the field offices and
15 what they're doing.

16 Q. Yes, but -- either a digital log or a hard
17 copy log, there has to be an inventory of these
18 devices; correct?

19 A. There is an inventory of the devices,
20 that's correct.

21 Q. And just like a firearm or any other piece
22 of FBI property, whoever is maintaining these
23 devices, like an ELSUR clerk or a technically trained
24 agent or a unit chief at Quantico, would want to know
25 where their devices are at all times; correct?

1 A. We do the best to know where they are,
2 that's correct.

3 Q. Do you maintain logs for your devices?

4 A. Yes.

5 Q. And does the Los Angeles division maintain
6 logs for their devices?

7 A. I would presume.

8 Q. So you'd also presume that Albuquerque
9 would have some kind of log to know where the devices
10 are; correct?

11 A. I would.

12 Q. Yes. Thank you.

13 So who sets the date and time on these
14 devices?

15 A. It can be anyone who has the USBird
16 software and the device and the computer to do so.
17 It could be a tech agent, an ELSUR operations
18 technician, or a case agent.

19 Q. And do you know if Mr. Acee here has the
20 ability to get into this software himself?

21 A. I don't know.

22 Q. Do you know if he has permission from the
23 ELSUR clerk or the technically trained agent to
24 download or use this original evidence?

25 A. I don't know.

1 Q. So we're presuming that there is a log in
2 Albuquerque to check in and check out a device.

3 Let's talk a little bit about maintenance
4 records, okay. So intoxilyzers fail, calibration on
5 these devices sometimes fail. Who maintains the
6 maintenance records of these devices?

7 A. There is limited quality control records on
8 devices that come through our unit. And then ADS
9 has, when they produce a product, or they repair it,
10 there is some record. But that's the only records
11 I'm aware of.

12 Q. So what you're saying is that each division
13 does not have a record of when a device malfunctions
14 or needs maintenance?

15 A. I don't think so.

16 Q. So when does a device come out of
17 circulation with the FBI?

18 A. When it fails and breaks and they can't fix
19 it, or it's been determined to be obsolete, and it
20 should be decommissioned.

21 Q. So if could you look at the exhibit I gave
22 you, and look for DVD 20 -- or just 20, I'm sorry.
23 That's the device that you had talked about earlier
24 that had -- you called it a clock fail or a date and
25 time fail; correct?

1 A. Yes. The clock battery was dead so the
2 clock battery didn't power the clock function.

3 Q. Was this device decommissioned based on the
4 failure of the clock after this recording?

5 A. I don't know.

6 Q. Who would be able to tell us that?

7 A. I don't think it would be decommissioned.
8 It would be Albuquerque's technical program.

9 Q. The technical agent that we talked about
10 earlier?

11 A. Yes, ma'am.

12 Q. Hugo Nanez?

13 A. Yes, ma'am.

14 Q. And there was some discussion with the Los
15 Angeles electronic operations unit about this
16 specific device?

17 A. We contacted Los Angeles Division's ELSUR
18 operations technicians to ask them to take the copy
19 of the disc to ADS to see if they could find any more
20 data that we couldn't see.

21 Q. So you presented them with a copy, not the
22 actual device; correct?

23 A. A copy of the evidence, yes.

24 Q. So why was a copy of the original evidence
25 made, and not the actual recording and the device

1 that made the digital evidence, why wasn't that given
2 to the Los Angeles division?

3 A. There was no need.

4 Q. Why?

5 A. Because it was identical to the evidence;
6 the copy is identical to the evidence.

7 Q. Well, the evidence itself you said you
8 verified. But it's just a copy --

9 A. I compared the copy, yes.

10 Q. I'm sorry, if you could just let me finish
11 my question. You verified a copy; correct?

12 A. Yes.

13 Q. Okay. But the actual data itself regarding
14 the metadata, the date, the time, the hours, the
15 seconds, that could have been on the original
16 recording device; correct?

17 A. Not based on what I'm seeing in this CD,
18 this CD.

19 Q. But you don't know because you gave them a
20 copy. You don't have the original; correct?

21 A. I never had the original.

22 Q. Who had the original?

23 A. Albuquerque.

24 Q. Who in Albuquerque?

25 A. I assume the ELSUR operations unit techs.

1 Q. You don't know?

2 A. No.

3 Q. And you don't know who checked it out to
4 verify that the battery was working when it was
5 checked out; correct?

6 A. Are you talking about the recorder now?

7 Q. Yes.

8 A. No, I don't know.

9 Q. You don't know. So did you work in any
10 field office before you became a Supervisory Special
11 Agent in Quantico?

12 A. I did.

13 Q. You were a case agent?

14 A. Yes.

15 Q. Which division?

16 A. Baltimore.

17 Q. Baltimore. Okay. So you understand how
18 important, when someone says something to a
19 government informant, that it would be prudent to
20 know the exact date and time of a statement; correct?

21 A. Yes.

22 Q. And especially someone like my client,
23 Mr. Garcia, if he had one of his statements allegedly
24 captured by a government informant, when that
25 statement was made would be very important in a

1 conspiracy case; correct?

2 A. Yes.

3 Q. So can you please tell us, Agent, why that
4 original device was not sent back to Quantico or to
5 ADS to determine exactly that metadata, which is so
6 importantly needed in this case?

7 A. We did send a copy of the evidence to ADA,
8 and they could not extract the metadata.

9 Q. I'm not talking about a copy. I'm talking
10 about an original piece of evidence or the actual
11 HAWK or the FALCON?

12 A. The HAWK wouldn't contain it anymore. It
13 was deleted. And we know that it was the battery
14 that didn't work. So we know it's a battery failure
15 that caused it from the CD that we're seeing, the
16 DVD. And we sent a copy of that to ADS, and they
17 confirmed it was a battery failure. And that's why
18 there is no date and time.

19 Q. And who at ADS confirmed the battery
20 failure?

21 A. I don't know.

22 Q. But you have an email with that
23 information; correct?

24 A. Yes.

25 Q. Is that something that you could please

1 produce to the Government and the Los Angeles
2 technician, so it could be given to the defense
3 counsel?

4 A. Yes.

5 Q. Thank you.

6 Okay. Let's talk a little bit about
7 teaching, and teaching technically trained agents and
8 case agents.

9 So, when I was back in the FBI, we used to
10 have forms for everything. And so I'd like to know
11 if there was a form that agents fill out when they
12 provide a recording device to a cooperating witness
13 or a cooperator?

14 A. You'd have to ask the case agents. I don't
15 know what they did.

16 Q. I'm not asking you about what they did.
17 I'm asking you if a form exists?

18 A. Do you mean a form in which you get consent
19 from someone?

20 Q. Yes.

21 A. There are consent forms that are used, yes.

22 Q. What kind of consent form, Agent? Tell us
23 a little bit about it.

24 A. I can't recall off the top of my head all
25 the details about it.

1 Q. I'm not asking you for all the details.
2 I'm just asking you for a summary of what the form
3 says. As the unit chief, you would be responsible
4 for teaching every division about these forms;
5 correct?

6 A. No.

7 Q. You wouldn't?

8 A. No.

9 Q. Who would then?

10 A. The people who run the training of those
11 agents who run those programs involving those
12 investigative matters. I maintain the equipment.

13 Q. You maintain the equipment, but don't you
14 also have any buy-in on how the equipment is
15 maintained, how the equipment is used, and the
16 policies the unit chiefs out of Quantico and
17 headquarters routinely develop these kinds of lesson
18 plans and syllabi, correct?

19 A. No.

20 Q. They don't. Okay.

21 Well, so tell us a little bit about this
22 consent form. It's, arguably, a form between the
23 agent and whoever is using the device, that they
24 consent to the use of this recording device; correct?

25 MR. BECK: Objection, compound, Your Honor.

1 THE COURT: Overruled.

2 MS. SIRIGNANO: I'm sorry, Your Honor.

3 THE COURT: Overruled.

4 A. So you'd have to ask the case agent what he
5 did. I don't know.

6 Q. No, I'm not asking you about what the case
7 agent did or didn't do. We'll get a chance with him
8 later. But I'm asking you what the consent form is
9 all about.

10 A. You need to have consent in most cases to
11 do a covert recording. So you have to get consent of
12 the person who is carrying the recorder.

13 Q. Consent of the person who is --

14 A. Going to carry the recorder.

15 Q. -- who is going to carry the recorder.

16 Now, as part of that consent form there is
17 also an admonishment, obligations on how to use it;
18 correct? I'm asking about the form.

19 A. You're asking about the form?

20 Q. Yes.

21 A. I can't recall.

22 Q. So, as part of your policy in your unit,
23 and in all of the FBI divisions, isn't it basic agent
24 training that whenever an informant or cooperator is
25 given something, they have to sign for it, like money

1 or a recording device?

2 A. In terms of filling out a form, getting
3 consent to use -- to make the recording, yes.

4 Q. And there are certain guidelines on how
5 recordings should be made; correct?

6 A. Guidelines meaning written guidelines?

7 Q. Sure. Or oral guidelines?

8 A. You would give oral instructions to a
9 source of how to -- what to do with a device.

10 Q. Okay. And based on your experience --
11 maybe that was done in this case; maybe it wasn't --
12 what kind of oral guidelines does a case agent
13 generally give to a cooperator when they're given one
14 of these devices?

15 A. I don't know.

16 Q. Generally speaking, and as the head of this
17 unit, what are the general guidelines?

18 A. It depends upon the scenario in which the
19 device is being used.

20 Q. Okay. So let's talk about a scenario in a
21 correctional facility setting. The device is covert.
22 Obviously, there is an on and off switch. Generally
23 speaking, based on your training and experience, what
24 kind of admonition or advice would a case agent give
25 this person?

1 MR. BECK: Your Honor, I'm going to object
2 to the relevance. I think we're getting pretty far
3 afield of Agent Williamson's role in this case and
4 expertise.

5 THE COURT: I'm inclined to agree.
6 Sustained.

7 Q. Agent, do all your trainings and your
8 syllabi have an outline of how these devices should
9 be deployed when --

10 A. No.

11 Q. -- when -- in -- okay, let me rephrase the
12 question then.

13 So how does a case agent know how to deploy
14 these devices, if the training and the policies don't
15 have a standard as to how to use them?

16 A. The expertise -- the TTA and their
17 expertise.

18 Q. So the TTA is involved in each deployment
19 then?

20 A. No.

21 Q. So I'll restate the question then. How
22 would a case agent know how to deploy these devices,
23 if it's not in the training, it's not in the policy,
24 and the TTA is not present with them?

25 A. You'd have to use your ingenuity and

1 determine a way to do it.

2 MS. SIRIGNANO: Your Honor, may I have a
3 moment?

4 THE COURT: You may.

5 MS. SIRIGNANO: Pass the witness, Your
6 Honor.

7 THE COURT: Thank you, Ms. Sirignano.
8 Mr. Lowry, were you up next?

9 MR. LOWRY: Yes, Your Honor. Thank you.

10 THE COURT: Mr. Lowry.

11 EXAMINATION

12 BY MR. LOWRY:

13 Q. Good afternoon, Agent Williamson.

14 A. Good afternoon, sir.

15 Q. I want to back up a little bit and just
16 talk about the mechanics of this device. You've
17 gotten into a lot of technical details about the
18 operation of the program. But I really want to talk
19 about the mechanics of the particular devices.

20 There is a lot of conversation in this
21 testimony you just had about -- well, describing the
22 evidence at play in this case. But it's fair to say
23 everything we've looked at today in these charts,
24 they're all copies of the original evidence; isn't
25 that fair?

1 A. Yes.

2 Q. And the original evidence was destroyed
3 when the device was wiped clean?

4 A. No.

5 Q. Why do you say that?

6 A. The original evidence is the first download
7 from the device when it's transferred to an
8 evidentiary disc. Because that's when the hashing
9 authentication is created from the SHA256.

10 Q. Okay. But that download is a copy of what
11 was on the device?

12 A. It's what was on the device with the
13 authentication hashing included.

14 Q. And who validated this -- what you just
15 described as authentication hashing?

16 A. When you first -- the first download from
17 the device, after you make a download, there is a
18 verify button. You click "verify." And it verifies
19 the hash calculation.

20 Q. That's a black box technology that ADS
21 developed?

22 A. Yes.

23 Q. So you're taking ADS at its word that
24 that's a mirror copy of what was originally on the
25 device?

1 A. Yes, sir.

2 Q. My question to you is: Who validated their
3 proprietary software so that FBI could be confident
4 that that copy is a true copy of the original?

5 A. We tested the devices to make sure they
6 actually performed as designed. You actually have an
7 authentic recording, and you listen to them, and say,
8 yeah, that's an authentic recording.

9 Q. But programs like NIST are designed to
10 create validation programs to test computer
11 algorithms; correct?

12 A. I'm not familiar with NIST function or role
13 in that regard.

14 Q. But are you aware of FTK reports?

15 A. No.

16 Q. No?

17 A. No.

18 Q. You don't work with other computer forensic
19 technology?

20 A. No, I do not.

21 Q. Just ELSUR devices?

22 A. The specific devices that are part of
23 technical investigative program are the ones I'm
24 familiar with.

25 Q. Are you aware of this ADS proprietary

1 software ever being validated by a third party?

2 A. No.

3 Q. So you're relying completely on their word
4 that it works?

5 A. I was not in the FBI or onboard when we
6 first initiated this contract with ADS, so I can't
7 speak to what happened when it first occurred.

8 Q. Because when -- earlier on direct with the
9 Government you were talking about comparing the hash
10 values, and you downloaded your own SHA256 program to
11 compare the hash values to what was on the evidence
12 DVDs that were provided; correct?

13 A. Yes.

14 Q. But it's fair to say you're comparing hash
15 values of a copy to a hash value of a copy?

16 A. I'm running a hash against the files that
17 contain the recordings. So I'm comparing a new hash
18 calculation made on the original, on those sessions,
19 on those audio recordings.

20 Q. But it's not the original; it's what was
21 downloaded?

22 A. It's a copy of the original that's in the
23 ELSUR storage facility in Albuquerque.

24 Q. And I guess what I'm trying to get at is --
25 I mean, let's back up and ditch the computer lexicon

1 for a second.

2 If we pretend the original recording was
3 like a piece of fine art, like the Mona Lisa, and
4 it's locked up in a secure room. What ADS is telling
5 you is we can send a master artist in there to make a
6 copy of that and bring it out of that secure room,
7 and put it on the table for you use; isn't that what
8 they're telling you?

9 A. Meaning what's transmitted down to
10 download?

11 Q. Correct.

12 A. Yes.

13 Q. And we're going to keep this safe. We're
14 going to make a copy. We're going to bring it out
15 for you to use; correct?

16 A. Yes.

17 Q. And then we'll make a copy of that copy and
18 hand it all around the courtroom, right?

19 A. Well, the copy is given to appropriate
20 personnel, correct.

21 Q. Fair enough. Appropriate personnel.

22 So when would you're doing your hash value
23 comparison, you're comparing a copy that Mr. Beck may
24 have to the copy that I may have in discovery?

25 A. Yes, I can run a hash calculation on the

1 copy you have or the copy that Mr. Beck has, any of
2 those.

3 Q. And the original that's in the locked
4 vault, that's been dispensed with?

5 A. We can run a hash calculation on that, too.

6 Q. How? If the ELSUR device has been wiped
7 clean?

8 A. No, the original evidence is sitting in a
9 DVD in the ELSUR storage room.

10 Q. I don't want to go around the circle too
11 many times. But that was the download of the
12 original?

13 A. We consider that the original evidence.

14 Q. You consider that the original evidence?

15 A. Yes.

16 Q. And that's based on what ADS tells you?

17 A. There is no way to get onto an ADS recorder
18 and listen to it and hear what's on it without
19 downloading it.

20 Q. And, again, you're taking ADS at its word
21 that that's a perfect copy of what was there?

22 A. Yes. And through experience.

23 Q. I want to talk to you about -- I think what
24 Ms. Sirignano handed you is a Chris Garcia exhibit
25 with the spreadsheets on there?

1 A. Yes, sir.

2 Q. Well, first, let me back up. So let's talk
3 about this actual device, if I can. You mentioned on
4 direct that there is an on/off switch; correct?

5 A. Yes.

6 Q. And that's for the person who has been
7 instructed to handle this device to activate?

8 A. Ideally, yes.

9 Q. Is there a way this device could
10 accidentally turn off?

11 A. If you could accidentally hit the switch
12 and turn it on or turn it off by accident, yes.

13 Q. Is there any kind of way somebody handling
14 the device would know that it was on?

15 A. I'm sorry. Say that again?

16 Q. Sure. Is there any way the person actually
17 using the device would know that it is on?

18 A. If they were instructed what to look for,
19 they could see a light that indicates a recording is
20 going on.

21 Q. That is a light that turns green if it's
22 on?

23 A. It flashes when recording is going on.

24 Q. So they would be able to see it flash?

25 A. If they knew to look for it.

1 Q. So when the device is turned on -- I
2 believe you said on direct that when you turn it on
3 it energizes the microphone?

4 A. Correct.

5 Q. How long does that take to energize the
6 microphone from the time you push the on button?

7 A. My understanding is for audio devices it is
8 practically instantaneously.

9 Q. So instantaneous, in your mind?

10 A. As fast as electricity powers up the
11 transducers.

12 Q. Okay. So if the people that were handling
13 this case in the field were told it took ten seconds
14 to activate the microphone, they would have been
15 misinformed?

16 A. With the audio/video, if video is involved
17 there can be a delay if the camera is activated. It
18 can be a correct instruction. It depends upon the
19 device.

20 Q. But if it was just a device in audio only
21 mode, it would only be -- it would be instantaneous,
22 if I understand you correctly?

23 A. It would be. But I think people might
24 still hear the delay instruction.

25 Q. I believe, Agent Williamson, you have

1 this -- we've been provided this in a manner that is
2 labeled DVD 15. Can you turn to that real quickly?

3 MS. BHALLA: Excuse me, Your Honor. Can
4 you get this one turned on? I'll just move over
5 here, Your Honor.

6 THE COURT: We'll have to get IT up here.
7 But I think everybody has positioned themselves so
8 they can see it on some screen. So let's go ahead.
9 BY MR. LOWRY:

10 Q. Agent Williamson, so if I understand your
11 testimony correctly, this would be a single download
12 from, in this case, I guess a RAVEN2A device?

13 A. Yes.

14 Q. Would you do me a favor: Could you tell me
15 the time above the pen?

16 A. On line 6?

17 Q. Correct. So how much recording time would
18 we have there, from 1 through 6?

19 A. The total number lengths of these together?

20 Q. Correct.

21 A. It's going to take me a while to add those
22 up. I'm not that good at math without a pencil.

23 Q. Just give me an approximation, if you will.
24 Take your time. You can add them up.

25 A. Over 53 minutes, if I'm adding close to it,

1 is the total combined of the length between 1 and 6,
2 of the total, if you add all those durations up.

3 Q. So you have less than 55 minutes; is that
4 fair?

5 A. Yes.

6 Q. Why would the person operating this device
7 tell the FBI handler that they had recorded five to
8 six hours of video, if we can only see less than 55
9 minutes of video -- I mean audio -- pardon me. I
10 meant audio throughout that.

11 A. I don't know.

12 Q. Okay. The person actually handling the
13 device knows when they turned it on; correct?

14 A. Unless they turned it off by mistake.

15 Q. But if they turned it off by mistake, they
16 wouldn't see the lights flashing?

17 A. If they knew to look for it.

18 Q. Are these individuals handling the devices
19 instructed on how to cut it on or cut it off?

20 A. I don't know what they were instructed.

21 Q. Should they have been instructed how to cut
22 it on and cut it off?

23 A. One would think you'd need to know that to
24 deploy it.

25 Q. So if you think that person needed to know

1 that to deploy it, then that person thought that they
2 deployed it for five or six hours, do you have any
3 reason to think -- well, why would we only see less
4 than 55 minutes?

5 A. I don't know.

6 Q. And I wanted to bring your attention to --
7 I'm going to go over this briefly, because I'm not
8 quite sure I understood it earlier.

9 There is a green flag. You can't tell on
10 this copy because it's a black and white copy. But
11 this green flag on line 21 -- and feel free to pull
12 it up on your digital device.

13 A. No. I would agree, it's a green flag,
14 given that the end time is 23:25 hours and 52 seconds
15 and the start time is the same for the next session.

16 Q. And I'm still a little confused. Why would
17 that recording 21 click off at 4 minutes and 45
18 seconds, when you look at DVD 17 that's part of that
19 same exhibit, and all of these are green flags, and
20 you see the run time is typically over an hour on DVD
21 17?

22 A. I don't know.

23 Q. So if I understand the green flag
24 correctly, that's for when the device senses it's
25 going to be a lengthy recording?

1 A. It's supposed to create a new session when
2 it detects that the amount of data exceeds the amount
3 that can fit onto an evidentiary disc.

4 Q. Okay. So I mean, I'm taking it that the
5 device, while it's a highly technical device is not
6 clairvoyant, it can't predict the future; am I
7 correct?

8 A. Yes.

9 Q. So what's the data limit that would cause
10 DVD 15 line 21 to cut off at four minutes, but on DVD
11 17 you have run times of over two hours?

12 A. I don't know.

13 Q. As the national leader, I assume you're
14 assigned to understanding how the ADS program works
15 with their proprietary software?

16 A. I don't know how the proprietary software
17 works. That's proprietary.

18 Q. Is there a data limit in kilobytes or
19 megabytes or gigabytes that you have to reach before
20 you hit a green flag and it terminates?

21 A. My understanding, it changes from recorder
22 to recorder. In order to make the assessment you're
23 asking, I'd have to actually get the actual recorder
24 and have ADS take a look at it and give us an answer.

25 Q. But on DVD 15 and DVD 17, we're both

1 talking about a RAVEN2A device; correct?

2 A. Yes.

3 Q. And as we sit here before this Court, you
4 can't tell us why one would transition at a little
5 under 5 minutes and the other would transition after
6 two hours?

7 A. Assuming it worked according to the way
8 it's supposed to work, it's based on data. So the
9 time involved doesn't reflect data. Do you
10 understand what I'm saying?

11 Q. No. Help me out there.

12 A. You could have a recorder going on for an
13 hour, and it be quiet, and there is very little data
14 hitting the microphone transducers, so there is very
15 little data being compiled on the recorder. Or you
16 can be in a noisy environment, having a lot of data
17 hitting the microphone and recording a lot of data.

18 Q. How do you measure that type of data that's
19 hitting I believe -- what did you say? The
20 transducer?

21 A. The microphone has a device that takes the
22 sound and converts it the electrical impulses into a
23 transducer. I don't know, to answer your question.

24 Q. Just another -- this is DVD 20 out of that
25 same series of this exhibit. And would you agree

1 with me that if we look down at line 13, we have a
2 red flag at line 13, which I've highlighted here?

3 A. I would have to look on my screen to see if
4 it's red.

5 Q. Absolutely. Help yourself.

6 A. Yes, line 13 is a red flag.

7 Q. You explained to this Court why, at line 13
8 and the red flag for everybody in the room means that
9 it's a low battery?

10 A. Correct.

11 Q. And it means that that recording at the end
12 of line 13 ended with a low battery?

13 A. That's correct.

14 Q. Can you explain to us then why -- how the
15 battery would have been recharged through lines 14
16 through 23?

17 A. It wasn't recharged.

18 Q. That's my point. If we have a low battery
19 at line 13, and the device has not been recharged,
20 why don't we have the red flag throughout rest of it?

21 A. Because you don't recharge batteries in
22 RAVEN2A. You replace them.

23 Q. Okay. So do you think the batteries were
24 replaced?

25 A. Yes.

1 Q. And that would have been by the user?

2 A. I don't know who replaced it, but someone
3 replaced it.

4 Q. And I would assume that you don't know what
5 the users in this case, who was in charge of
6 replacing batteries?

7 A. That's correct.

8 Q. If I understood your affidavit correctly,
9 there are two types of batteries in the devices, a
10 lithium battery and maybe a regular battery?

11 A. Well, most of the batteries used are moving
12 to lithium, so both would probably be lithium
13 battery.

14 Q. Okay. A lithium battery for the device and
15 a lithium battery for the clock?

16 A. Probably, yes.

17 Q. And you're saying "probably" --

18 A. You can buy nonlithium batteries that will
19 configure and fit into those devices. So you
20 wouldn't be required to use a lithium battery. But
21 there are generic batteries that are sold
22 commercially, like AAA batteries, AA batteries,
23 things like that.

24 Q. Agent Williamson, back to DVD 15 briefly.
25 Can you sit here looking at this spreadsheet and tell

1 us each time a session ended whether that was
2 intentional or accidental?

3 A. No.

4 MR. LOWRY: No further questions, Your
5 Honor.

6 THE COURT: Thank you, Mr. Lowry.

7 Any other defendant have questions of Mr.
8 Williamson?

9 All right. Mr. Beck, do you have redirect
10 of Mr. Williamson?

11 MR. BECK: No, Your Honor.

12 THE COURT: All right. Mr. Williamson, you
13 may step down. Is there any reason that Mr.
14 Williamson cannot be excused from the proceedings?

15 Mr. Beck, can he be excused?

16 MR. BECK: Yes, he may, Your Honor.

17 MS. SIRIGNANO: No, Your Honor.

18 THE COURT: All right. Not hearing anybody
19 say that he can't be excused, you're excused from the
20 proceedings. Thank you for your testimony.

21 THE WITNESS: Thank you, Your Honor.

22 THE COURT: All right. Mr. Beck, does the
23 Government have further witnesses or evidence it
24 wishes to present?

25 MR. BECK: No, Your Honor.

1 THE COURT: All right. Do the defendants
2 wish to present any evidence?

3 MS. SIRIGNANO: No, Your Honor.

4 THE COURT: All right. Mr. Beck, if you
5 wish to argue in support of your motion.

6 MR. BECK: So, Your Honor, with today's
7 testimony, the defendants have the information to
8 which they would be entitled under Rule 16, under
9 Brady, under Giglio, and more information than that.

10 I think the only information that they
11 don't have at this point are sort of the dimensions
12 of the recorder and to be able to inspect the
13 recorder, which --

14 THE COURT: You know, this is probably a
15 question that's more appropriate to the defendants,
16 but do you understand what it is they're trying to
17 get from that remaining information that you're
18 withholding?

19 MR. BECK: I think so. I think what they
20 were intending to look at -- I mean, we can trace
21 back and see how this was a train wreck on our
22 behalf, the United States' behalf. We did not do a
23 good job of educating ourselves and the Court in what
24 happened here. I think what they were looking for
25 was the metadata to understand. First of all, we

1 didn't know there was metadata. Then we found out
2 there was metadata.

3 And I think what the defendants were
4 looking for in accessing the devices is -- I think
5 what Ms. Jacks was explaining to the Court in
6 November, early November hearings, was that she
7 wanted her forensic computer expert or a forensic
8 expert to analyze these devices and go back and see
9 whether there is any trace metadata on these devices
10 when they're deleted. There is not. And that is
11 what the hash values and the procedures in place tell
12 us, is that, as he testified, once you download it,
13 the devices are wiped clean. So once you have a
14 disc, you have everything that was off of that. That
15 is the evidence. And the discs are wiped clean.

16 And there is a reason for that. If we go
17 back to what Mr. Lowry was saying here about the Mona
18 Lisa, that Mona Lisa hangs in a vault or a chamber
19 somewhere, and all we see is the picture. If we're
20 having a court hearing or a trial that involves the
21 Mona Lisa, the Court doesn't require the Mona Lisa to
22 be produced in court. A picture that is
23 authenticated by saying that's how it appeared that
24 day, that's how it looks to me, is sufficient. And
25 the reason why, is because you could have someone

1 come in, and you could look at the Mona Lisa, and
2 someone who is educated on the Mona Lisa could say:
3 That's now exactly how da Vinci painted that smile;
4 that is not an authentic reproduction of what the
5 Mona Lisa is.

6 You can do that same thing here through the
7 hash values. So we're not taking ADS's word for it.
8 We're not taking his word for it. There is a
9 procedure in place, with hash values, that makes sure
10 what was on there is authentically reproduced and not
11 modified in any way.

12 And I would -- and, as an example, I would
13 show the Court the modifications to Rule 902 for
14 authentication that came into effect at the beginning
15 of this month, December 1st. And you can now have
16 self-authenticating evidence, certified data copied
17 from an electronic device, storage medium, or file.
18 I expect that the Court will see a certification like
19 this in this case that gives some of the same data
20 here. And so what it allows for is you have a
21 certificate of a qualified person that complies with
22 the certification requirements of 902 (11) or (12).

23 So, in this case, what would happen is an
24 expert who has verified the data in the exact same
25 way that Special Agent Williamson did, writes out in

1 a certificate all of the things by affidavit that he
2 did to certify this. And so, again, if we're looking
3 here at 902(14), that's Rule 902 evidence that is
4 self-authenticating.

5 And if we go here, this is the committee
6 commentary to the 2017 amendments. Paragraph 14, the
7 second paragraph in there talks about authentication
8 for hash value; that the Committee on the Federal
9 Rules of Evidence, that the courts recognize that the
10 process that ADS put in place to authenticate the
11 data that was on the ELSUR, or in this case HAWK and
12 other ADS storage devices, the way in which the hash
13 values were obtained, and the way in which they were
14 assigned authenticates the evidence as same as the
15 original.

16 And so that's why the defendant have all
17 the information that may be helpful or may be useful
18 to them, is through this hashing that was contained
19 on the evidentiary DVD that was copied, and then
20 provided to the defendants to look at their DVDs,
21 provides them everything they wanted in the same form
22 as the original.

23 So the way in which an expert on da Vinci
24 would come in and say that smile is different, is the
25 same way in which this hash value, if those files

1 were ever modified -- which they can't be -- but if
2 they ever were, the hash value that Special Agent
3 Williamson showed to the Court there, the long string
4 of numbers where we looked at the first and the
5 second, they would be completely different from each
6 other. And that's how we can authenticate digital
7 evidence in court. We look at the hash values that
8 were assigned when that recorder was downloaded, the
9 hash values on the evidentiary DVD, the hash values
10 on the copies of the DVDs that he had today and that
11 the defendants have contain the exact same hash value
12 showing that it is identical to the original.

13 Now, so that the three DVDs that we played
14 at the end are the three DVDs in which the metadata,
15 as I said -- and as Special Agent Williamson pointed
16 out -- the metadata does not match up with the real
17 world.

18 And so in the case of the DVD with the 1899
19 dates, the battery died, and so all the date
20 contained in those files is authentic; it's exactly
21 what was on the device. It just doesn't -- it
22 just -- when you play it through the player, it
23 doesn't correspond with real dates and times. But it
24 is the same exact data that was created when the user
25 hit the on and off button.

1 The same thing for the second and third,
2 although a little bit different, the third and fourth
3 that I played. Those, there was something in the
4 process so that the internal computer for the devices
5 did not match up with the actual dates and times.
6 And the way in which that was discovered is by
7 looking at either when these devices were deployed
8 out into the field or when these conversations took
9 place accordingly, and that there was no recorder in
10 the jails during those dates or the source recording
11 wasn't placed next to the person who he was recording
12 in those cases. So in that case, again, even though
13 that data is inaccurate in terms of real world data,
14 nothing would be gained, even if that information
15 were still on the device, which it weren't, because
16 that's just the coding.

17 If -- there is no way to manipulate the
18 date, as Special Agent Williamson testified, there is
19 no rewind button. There is no way to manipulate this
20 data. But if you did, again, the hash values would
21 be different, and it would not -- the proprietary ADS
22 software wouldn't read the information.

23 So I think that's why I was hoping that
24 Special Agent Williamson's testimony would make
25 clear -- and it think that it did -- that no helpful

1 or useful information will be gained from inspecting
2 the devices, from allowing access to the devices.
3 The hash values are in place, they are an accepted
4 method of authenticating the original, and there is a
5 reason why.

6 So if we look at the law, the same law
7 enforcement privilege applies as would apply in
8 Roviario. And what I looked at in the case law and
9 what they looked for is that basically there is a
10 compelling need to have access to this law
11 enforcement sensitive information. And the
12 defendants cannot establish they have a compelling
13 need for the devices or for access to the devices,
14 because nothing would be gained from accessing the
15 devices, nothing helpful.

16 THE COURT: All right. Anything further,
17 Mr. Beck?

18 MR. BECK: Not at this time, Your Honor.

19 THE COURT: Thank you, Mr. Beck.

20 Who wants to take the lead here? I'll kind
21 of go in the order of the examination. Do you want
22 Mr. Lowry to go first?

23 MS. JACKS: I think Mr. Lowry would like to
24 go first, if the Court doesn't mind.

25 THE COURT: All right. Mr. Lowry.

1 MR. LOWRY: If the Court would indulge me,
2 Your Honor. I just wanted to speak briefly. And I
3 understand the Court's concern is: What do we need
4 that we don't have, if I understood the Court
5 correctly.

6 And I think the very last question that
7 Agent Williamson answered is exactly why, on behalf
8 Mr. Baca, we would like to examine this device. The
9 real issue here is, for Defendant Baca, is how easy
10 was it for Mr. Duran to manipulate this device?

11 Mr. Duran tells Mr. Acee in the text that
12 he provided five to six hours of his recordings of
13 Mr. Baca. But, as you heard Mr. Williamson say, that
14 the DVD provided has less than 55 minutes. There is
15 an open question that you pose, is there no way to
16 tell from this metadata that was provided, if the
17 recording sessions were inadvertently cut off or
18 intentionally cut off. And I didn't get the sense
19 from him how easy it was to inadvertently switch on
20 or off the device, which is, frankly, why we want to
21 see it. It's less about the metadata, and for Team
22 Baca, I would say, it's almost not about the
23 metadata, but it's about how easy it is to manipulate
24 this device. And when I say "manipulate" I mean turn
25 it on or off. And it's really critical for us to

1 know is it turned off so easily that it happens, you
2 know, just by happenstance?

3 So there is a whole bunch of actually
4 technical, mechanical questions that one would want
5 to get from looking at the device: Like how much
6 pressure do you have to apply to the button to
7 actually turn it off? How bright or luminescent is
8 this light that's on flashing when your device is on
9 compared to when it's off? Whether anybody normally
10 using this device knows it's on, knows it's off?
11 Especially somebody, as in this case who is given
12 this device and tasked with recording other
13 individuals in the prison. You would think that they
14 would be acutely aware of whether the device was on
15 or not. Because that, in the words of Eric Duran,
16 was his quote "mission," was to record Mr. Baca.

17 So I find it a little bit disconcerting
18 that the Special Agent testified that he didn't know
19 whether it was an intentional log off or not. And
20 that's something we need to explore. And the only
21 way we can explore that is to examine the device. So
22 I would say that's the primary reason we would like
23 to look at it, Your Honor, so we could understand
24 that fully. It's a critical part of our defense,
25 because there is a big difference between five or six

1 hours of recordings and less than 55 minutes of
2 recording.

3 But moving to the metadata -- and I'm going
4 to have to research this authentication element under
5 federal Rule 902 -- but it concerns me a great deal
6 that we're just taking ADS's word at face value.

7 Mr. Beck took me up on the Mona Lisa
8 example, but let me play with that for a second. We
9 all know what Mona Lisa looks like, but let's say we
10 have a Jason Pollack painting locked up in the vault,
11 and I'm coming out and saying, Hey, well, here's the
12 one I have in the vault. If nobody really knows
13 what's in the vault, and we're all talking about
14 copies, that's the question.

15 And it bothers me a great deal that this
16 process, this proprietary software has never been
17 vetted or validated by any independent agency, and
18 we're taking it at face value that it is what it
19 purports to be.

20 And I'm sure the Government's confident and
21 at ease with a certification of authenticity. But my
22 question is a little bit broader than that, and
23 perhaps, delves more on a real technical validation
24 issue maybe under Daubert. But we weren't aware that
25 there is a Daubert issue until we saw this affidavit.

1 But I'm familiar with DNA evidence and
2 those kind of things, and those types of black box
3 technologies, whether you're talking about
4 breathalyzers or electropherograms or the STRmix
5 data, which you also hear about in this case later
6 on. The people that develop these types of software
7 open it up for the FBI, and even independent
8 organizations to view it and validate it, to make
9 sure it is what it purports to be, a valid technique
10 to record and then download correctly.

11 And so, again, for Mr. Baca, I'm not saying
12 metadata is of no concern whatsoever, but our primary
13 concern is really about the mechanics of this device:
14 How does it cut on? How does it cut off? And is it
15 accidental or not? And I think that's a critical
16 part of the case. And I think that's something we
17 don't get from looking at the metadata, and
18 unfortunately, it not even something we get from
19 looking at a picture of a device. You'd actually
20 have to handle it to understand how the buttons
21 function and how it cuts on and off, and whether it
22 can be accidentally turned on and accidentally turned
23 off, or whether it's damn near impossible.

24 And if you have any other questions, Your
25 Honor, I'd be happy to answer them.

1 THE COURT: Do you disagree with Mr. Beck
2 that the standard here to overcome this privilege is
3 that the defendants have to show a compelling need?

4 MR. LOWRY: I think -- yes, I would agree
5 that it's a compelling need. And I would think that
6 based on what I've just argued to you that we have a
7 compelling need to access the device.

8 One thing the United States hasn't told
9 you, Your Honor -- and I'd be remiss if I did not --
10 is that the Seventh Circuit in the United States of
11 America versus Vernon Chapman -- and I don't have a
12 Westlaw cite, but it's appeal numbers 14-3311 and
13 14-3363, and this is an October 2015 Seventh Circuit
14 opinion, ordered the FBI to disclose a HAWK device
15 not once, but twice to two different experts for
16 forensic review. So you wouldn't be taking the first
17 step on to the playing field. And this is an opinion
18 by Circuit Judge Bauer, joined by Williams and
19 Hamilton. And they -- again, the district court in
20 this case had ordered this HAWK device disclosed to
21 two independent experts to evaluate it. So it's not
22 as if compelling needs cannot be shown under any
23 circumstances.

24 THE COURT: What were the compelling needs
25 in that case?

1 MR. LOWRY: It was whether -- sort of what
2 we're talking about here -- they thought that the
3 recording had been tampered with, Your Honor, and so
4 they turned it over to experts to see if it had. And
5 I perused the opinion. The experts actually
6 determined that it had not; that the recordings
7 were -- the integrity of the recordings had been
8 maintained. But the point being is that once the
9 need was there, the judge gave them not one, but two
10 bites at the apple, to prove their case. And they
11 didn't, and the recordings came in. But the point
12 being is that there was a compelling need
13 demonstrated by the defense, and the judge gave them
14 that opportunity.

15 And I'd be remiss again to say that it
16 strikes me -- and I noted in the Government's brief
17 that the United States claims that they have the
18 prerogative to disclose these devices to whoever they
19 want, whenever they would like. And they have to say
20 that because they have to justify having given this
21 device to someone like Eric Duran, who not only was
22 convicted of murder, but we know has both in the past
23 fled from the police and caused significant harm to
24 law enforcement in refusing to obey lawful orders of
25 police officers, where they had to discharge their

1 firearms to try to apprehend him.

2 And it strikes me as a bit odd that the
3 protective orders of this Court with a former FBI
4 agent can't review this device, if there is somehow a
5 security risk to the United States when you have
6 somebody who, as we speak in this courthouse, is a
7 fugitive from justice, who knows everything about
8 this device. To think that -- and maybe it is the
9 United States' prerogative, Your Honor, about who
10 they let see these. But there is also a balancing
11 test that this Court can entertain, to see whether
12 the defendants have met a compelling need to get
13 access to the device, and inform Mr. Baca getting
14 access to the device is imperative, so we can know,
15 if and when Mr. Duran ever shows up, whether he was
16 turning on this device intentionally and willfully,
17 or accidentally. And it goes to his credibility. It
18 goes to the reliability of the recordings. It goes
19 to Mr. Baca's defense about these recordings being
20 manipulated at his will.

21 So, Your Honor, I would ask the Court to
22 order the production of the device so our expert
23 could examine it under a very strict and robust
24 protective order, frankly.

25 THE COURT: Let me do this. I've got some

1 more questions I want to ask you, and I don't want to
2 rush anything. But I do need to give Ms. Bean a
3 break. So why don't we take about a 15-minute break,
4 and we'll come back in and go about an hour.

5 All right. We'll be in recess for about 15
6 minutes.

7 (The Court stood in recess.)

8 THE COURT: All right. It looks like
9 everybody has an attorney. Look around the room,
10 make sure everyone has an attorney.

11 All right. Mr. Lowry, if you wish to
12 continue your argument.

13 MR. LOWRY: Well, Your Honor, I think I had
14 finished. I was standing for the Court's questions,
15 if you had any.

16 THE COURT: If I understand, all we're down
17 to, pretty much with Mr. Baca, is that you want
18 somebody to be able to press the button and see how
19 hard or how easy it is to record. Is that what we're
20 down to?

21 MR. LOWRY: Well, that, and whether, based
22 on the illumination of the lights on the device,
23 whether you would know if it's in active recording
24 mode, or whether -- suppose Mr. Duran goes to
25 activate the device and thinks he's recording a

1 conversation, he could say, Oh, I missed that part
2 because I saw the light wasn't flashing, so I had to
3 go back and cut it on. I mean, without knowing how
4 the device is illuminated, in tandem with the
5 buttons, we're at a loss to explain why the person
6 holding the device, employing the device, would or
7 would not know it was on or off at a given moment.
8 And that's imperative to our defense, Your Honor.
9 And I can't overstate.

10 I would just point out for the record --
11 and I believe in the briefing and in the discovery,
12 that the Government indicated that Mr. Duran had two
13 different devices, but based on the Garcia exhibit,
14 he had three different devices. He had a RAVEN
15 device, a HAWK device, and an EAGLE device. But, I
16 mean, that's just a little tidbit.

17 But the real point for us, Your Honor, is
18 exactly what I've been talking about is the mechanics
19 of the device. Would the person holding the device,
20 using the device, know it was on, and would they know
21 it was off? And that sounds really simple. And in
22 theory it is. But in practical application, it's
23 imperative that we know exactly how it functioned so
24 we can be prepared at trial to defend against a claim
25 that, Oh, it was an accidental turn off, it just -- I

1 dropped it and it cut off, or whatever. I can't even
2 begin to anticipate what the testimony will be. But
3 we need to be prepared for any kind of testimony that
4 the thing randomly cut on and off. And the only way
5 we can defend against that is to actually look at the
6 device.

7 I would, you know, analogize it to the
8 trigger pull on a weapon. I'm not a firearms person.
9 But I think people that are into firearms are all
10 about how much pounds it takes to pull the trigger.
11 So, essentially, that's what I want to do with this
12 device. I need to know how much pressure it takes to
13 cut off. Does it cut on accidentally, or is it only
14 intentionally? And when you intentionally cut it on,
15 is it apparent it's on by a glowing bright green, is
16 it glowing red? I don't know. I've never seen it.

17 THE COURT: Well, why not just ask those
18 questions of Mr. Williamson?

19 MR. LOWRY: Well, I mean, in fairness, Your
20 Honor -- I mean, it strikes me -- again, I want to
21 come back to this idea that, I guess part of my role
22 as a criminal defense attorney is I'm a natural born
23 skeptic. And I want to handle the device myself
24 rather than take the word of an agency who is trying
25 to prosecute my client and put him in prison for the

1 rest of his life. I hope Your Honor would
2 understand --

3 THE COURT: Then that sounds very much
4 you're just like fishing for evidence.

5 MR. LOWRY: No, I'm not. I'm telling you
6 exactly why I want it. It's not a fishing --

7 THE COURT: But you've got a witness on the
8 stand that can answer the lights issue, and tell you
9 how hard it is. I mean, you know, that's just
10 fishing after that, to see if you can come up some --
11 you know, play with it and come up with your own
12 theory.

13 MR. LOWRY: No, I mean, I think I need to
14 know -- I mean, one of the things we can do, if we
15 went in is actually measure the illumination, the
16 lumens that the thing gives off. So would an
17 ordinary person be aware, based on the lights, that
18 it's on or off? I mean, you're asking us -- it's not
19 a fishing expedition. I'm telling you exactly what I
20 want out of this device, in terms of the pressure --

21 THE COURT: But you're just fishing to see
22 if something turns up.

23 MR. LOWRY: No.

24 THE COURT: There is no evidence that
25 anything is wrong with the device, or that it doesn't

1 work as intended.

2 MR. LOWRY: Well, it didn't work as
3 intended, Your Honor. I mean, we're looking at a
4 bunch of data that's a bunch of goose eggs. And they
5 had to come in and explain why it didn't work as
6 intended. So I hesitate to agree with Your Honor
7 that the thing worked as intended. I mean, if we
8 look at some of the data sheets, there is no data.
9 It's everybody's guess, if you look at DVD 20, I
10 believe it is, they all say zero minutes of
11 recording, and the same date and time.

12 But it's really not a fishing expedition,
13 Your Honor. I mean, we're looking for the pressure
14 it takes to turn on the button, the illumination in
15 terms of lumens for the device, the lights on the
16 device. I mean, it's concrete information that we
17 want. We know it exists. We just want to measure
18 it.

19 THE COURT: All right.

20 MR. LOWRY: And I don't think Mr.
21 Williamson would know. If we want to put him back on
22 the stand, we could ask him, but I don't think he
23 knows that information.

24 THE COURT: All right. Thank you, Mr.
25 Lowry.

1 Anyone else? Ms. Sirignano?

2 MS. SIRIGNANO: Your Honor, I've just
3 passed you the Exhibit A and B, which was entered in
4 today as evidence. And what Mr. Lowry referred to is
5 on Exhibit B. And on the top is DVD number 20, which
6 has the problems with the metadata. And I'd just
7 like the Court to look at that and the different
8 devices that --

9 THE COURT: Which one? B?

10 MS. SIRIGNANO: B, Your Honor, yes.

11 And with all due respect, Your Honor -- and
12 very respectfully -- I did try and ask the agent
13 about the device. And I was shut down because of
14 some alleged national security or proprietary
15 argument privilege.

16 And I was prepared to go through every
17 feature on that HAWK device, which is -- the pictures
18 are in Exhibit A -- and unfortunately, I wasn't
19 allowed to do that. So, as you can see, the
20 Government's argument about this information being
21 national security privileged, it fails terribly.
22 It's all over the internet. And while it might be
23 proprietary in nature, it's over the internet, it's
24 on YouTube.

25 And although that manual is 2007, which

1 came into evidence -- there might be a newer one --
2 but for all intents and purposes I would have liked
3 to have asked if the buttons were the same. But this
4 witness wouldn't give us an answer, nor was I allowed
5 to go into the specifications of the device.

6 So just two really quick points, Your
7 Honor. I do believe there is a compelling need. And
8 this is definitely not a fishing expedition. You
9 heard the Government's witness admit to the dates in
10 these devices; that some of them are bogus. And I
11 did elicit on cross-examination that the dates and
12 times and seconds of these recording devices is very
13 compelling, it's very important to establish in this
14 case the conspiracy statements, co-conspirator
15 statements. The date and the time is very important
16 for all of us. As these recordings, either they
17 pre-dated conspiracy or they post-dated the
18 conspiracy.

19 And as you can see, to use Mr. Lowry's
20 language, in DVD number 20, there is a bunch of goose
21 eggs there, Your Honor, all zeros.

22 And what we couldn't hear from this witness
23 was what data integrity checks were done, either at
24 the time that the device was taken out of the ELSUR
25 room or, at the time that the ELSUR clerk downloaded

1 this information. And arguably, if there was problem
2 downloading this information, then it should have
3 been stopped. And the original recording on the
4 device itself should have been sent to Los Angeles,
5 and not a copy. That's not the best evidence. The
6 best evidence is not a duplicate. I think it's
7 pursuant to Federal Rule of Evidence 10002 and 1001
8 is where it's defined. So I think we have shown a
9 compelling need.

10 Additionally, with the testimony that the
11 Government's main snitch said that he had five to six
12 hours of recordings, and we only see 53 minutes
13 here -- and, Your Honor, if you go through each
14 entry, each session time, you can see where one flips
15 over at the end of the recording and it starts at the
16 exact same time with a second session. That would be
17 a proper recording, one session goes into a second
18 session, depending on the device. But then you'll
19 also see other sessions that, for whatever reason,
20 only go for a few seconds.

21 And it also came out in the testimony of
22 the handler's ability to start a conversation and to
23 stop a conversation instantaneously.

24 So I would just submit, Your Honor, that we
25 have shown a compelling need. This national security

1 argument fails. And all we're asking for is to have
2 one attorney and our expert, Mr. Bryan, be able to
3 look at this recording and to ascertain the problems
4 with this metadata that does exist and the data
5 integrity issues that we uncovered today.

6 Thank you, Judge.

7 THE COURT: Well, are you where Mr. Lowry
8 is? You primarily want to touch the off and on
9 device, look at the lights. And the metadata, it is
10 what it is, and there is not much more to be mined
11 there.

12 MS. SIRIGNANO: Well, I am with Mr. Lowry
13 on actually viewing the device, the on and off
14 switch, and the light issue. But with the metadata,
15 I agree with the Court, that it's either there or
16 it's not there. But we don't have any testimony from
17 the FBI about what they did with the data. And he
18 said he verified it, but he didn't explain how. And
19 they're just taking the proprietary software and the
20 program that was developed for not just the FBI; it
21 seems for other law enforcement agencies. And in
22 making the copy of the original recording, the
23 original recording stays with the device, and what
24 the FBI is calling the evidentiary copy. But, Your
25 Honor, I submit it's a copy. And without that

1 original device, it's very hard to -- it's impossible
2 to make sure that the integrity of the data exists,
3 or still exists.

4 THE COURT: But what is -- what more is to
5 be done? I mean, that's kind of a legal argument,
6 isn't it? But there is nothing really more as far as
7 tests or anything that can be done on the metadata
8 side, is there?

9 MS. SIRIGNANO: Yes, the Chapman case --
10 and I reviewed it briefly -- there were a couple of
11 experts that reviewed that date. And Mr. Bryan, if
12 he was able to get access to the original copy, what
13 they're calling the original evidence, he might --
14 well, he can look at that data to see if there was
15 any manipulation other than the on and off switch.

16 THE COURT: But if I understood the
17 testimony, there is nothing on the recording device
18 now.

19 MS. SIRIGNANO: Well, that's what I
20 understand, Your Honor. So the copy, the original
21 copy -- which we don't have -- it's in FBI's evidence
22 vault somewhere -- we were given copies of copies.

23 So what I would like to look at with Mr.
24 Bryan is the original copy, to see if there is any
25 anomalies or any manipulation.

1 THE COURT: So that doesn't have anything
2 to do with the device. That's just you're wanting to
3 see, I guess, whether the copy, your copy, is the
4 same as the copy of the original?

5 MS. SIRIGNANO: Yes, Your Honor.

6 THE COURT: So that doesn't have anything
7 to do with the device?

8 MS. SIRIGNANO: Not the device itself,
9 since the FBI destroyed that evidence.

10 THE COURT: So the metadata is just limited
11 now to a copy issue, not to the recording device
12 anymore?

13 MS. SIRIGNANO: Except for disc number 20,
14 which we were told that never -- the metadata was
15 never captured because of a battery issue.

16 THE COURT: But we can't do anything on
17 that at this point, right?

18 MS. SIRIGNANO: Not at this point, Your
19 Honor.

20 THE COURT: All right. So if I understand
21 where you and Mr. Lowry are, in combination, it's the
22 on and off switch; it's the lights; and you want to
23 look, now, at the original disc to see if it's the
24 same as the copies you're getting?

25 MS. SIRIGNANO: Yes, Your Honor. Thank

1 you.

2 THE COURT: So I have the universe, and
3 that's it?

4 MS. SIRIGNANO: You do.

5 THE COURT: Thank you, Ms. Sirignano.

6 MS. SIRIGNANO: Thank you.

7 THE COURT: Anyone else want to argue?
8 Ms. Jacks?

9 MS. JACKS: I have a few comments, because
10 I mean, this has been sort of a moving target. I
11 think, when we first started, we were requesting the
12 metadata, because we were saying to the Government:
13 How can you have recordings that you don't know what
14 date they were made, if you're saving the metadata?
15 How can you have recordings that show up as having
16 nothing in them, and they have minutes of recordings,
17 you know, in these files? How can you have
18 recordings that are supposedly made in 1899? And so
19 those were the questions that were raised by the
20 Government's evidence, and why we were saying, look,
21 we need metadata.

22 And I join the Court in complimenting Mr.
23 Beck to getting some of the answers to those
24 questions. And I thought he did a good job in
25 briefing, or in setting out and honing in on the

1 issues here. And I think what the Government's
2 answer has been, Well, how that can happen is the
3 device malfunctioned, or the person that set up the
4 device sent it out the door of the FBI in Albuquerque
5 without the right date setting, or -- and I think
6 we've also heard -- and the Government has answered
7 the questions about how they know when a date, for
8 example, on that Exhibit B, that you have before you,
9 if you look at the one labeled DVD 17 -- I'm sorry,
10 DVD 19 -- this is a summary of recordings that were
11 allegedly made by Billy Cordova with Rudy Perez. And
12 these purport to have dates on there. I mean, it's
13 not like you get a date of 1899. These purport to be
14 recorded between February 1st and February 4th.

15 And what the Government has determined,
16 apparently, that -- this is what I understood through
17 these hearings, and ultimately today -- is that those
18 dates are wrong, and they're wrong because either the
19 device wasn't introduced into the facility on those
20 dates, or because Mr. Cordova wasn't housed next to
21 Mr. Perez on those dates. You wouldn't know that by
22 looking at it. By looking at it, it looks like it's
23 purporting to tell you about recordings that happened
24 on February 1st, 2nd, and 4th.

25 So my point -- I guess what I'm saying is I

1 think the Government has answered our questions. And
2 I think what we're hearing is that there were various
3 errors, some mechanical and some human caused, that
4 produced this confusing data set that we've been
5 trying to make sense of. And for that, I think we
6 understand where we need to go.

7 I think Mr. Beck and his expert have made
8 it clear that these ELSUR devices, once the data is
9 downloaded off them, whether it downloads correctly
10 or incorrectly, or whether the download is accurate,
11 the device is simply wiped clean and never further
12 examined. So I don't think there is anything that we
13 can gain by looking at the actual ELSUR devices,
14 looking at the metadata on the ELSUR devices. I
15 think the Court is right, that's long gone. And any
16 effort to inquire about the integrity of that or
17 whether there is data on the device that wasn't
18 downloaded onto the DVD, that opportunity was missed
19 when the Government just erased the devices and moved
20 forward.

21 With respect to Mr. Lowry's comments, I
22 join in his request to examine the devices. And I
23 can only sit here and run through in my mind the
24 various excuses that Mr. Duran or Mr. Cordova or
25 other government informants are going to come up with

1 when they're challenged about: Why are you turning
2 this thing off and on and off and on multiple times
3 during a very short time period? And certainly,
4 mistake or accident, or the thing shut off, you know,
5 when I set it down, those are the types of, I think,
6 excuses that are going to be offered up here in court
7 to explain this very unusual manner of recording a
8 conversation.

9 I note, in looking at the Government's
10 evidence -- and I think the Court can see that in
11 examining Exhibit B -- there are three separate types
12 of electronic surveillance devices that were used in
13 this investigation. And it looks like some of the
14 informants used the same device, and some of the
15 informants used multiple devices, depending on which
16 one was introduced into the prison at which point in
17 time. So I think, to be fair, or to be clear about
18 Mr. Lowry's request, or what's the remainder of the
19 defense request, is an opportunity to examine a
20 prototype of each one of the type of electronic
21 surveillances devices. So that looks to me like it's
22 a HAWK8A, a RAVEN2A, and an EAGLE8C.

23 But the one other thing I just want to
24 point out -- and that's something that's just become
25 apparent to me over the course of these hearings --

1 is in responding to our letter, the Government did, I
2 think, make an effort to respond directly and to be
3 concise, and answer our questions. And for that I'm
4 appreciative.

5 I do note there are errors in the
6 Government's response. One that jumped out at me
7 today is the Government is reporting to us and to the
8 Court that Mr. Duran had two separate ELSUR devices
9 at different points in time. And the exhibits in --
10 the pages of Exhibit B show that Duran at least had
11 three separate devices: 1168, 730, and 1188. And so
12 it is troubling.

13 This stuff is complicated. It's difficult
14 to understand. It's difficult to analyze. But it's
15 troubling that the Government continues to be
16 inaccurate and make mistakes in terms of what it's
17 disclosing about who had what when. But I think --

18 THE COURT: But that's a separate issue,
19 though, from looking at the device issue.

20 MS. JACKS: Correct. I just want to point
21 out, we've certainly learned a lot. And I think that
22 it's been helpful to try to understand where we go
23 from here.

24 But I guess my point is only that, sort of
25 the target has changed over the course of this

1 litigation. And I think we have gotten answers. And
2 basically what we know now is to examine the devices
3 for the metadata would be a fruitless action because
4 the Government destroyed that information when they
5 downloaded the device and erased it.

6 THE COURT: Maybe I missed this point, but
7 I thought he testified that when you download, you
8 don't have it on the machine anymore. I mean, it's
9 not like, if I make a CD of something on my hard
10 drive, it's still on the hard drive. Here, when you
11 download, you lose it off the device.

12 MS. JACKS: Maybe I failed to ask the right
13 question on cross-examination. I have some testimony
14 from the other cases that Mr. Beck provided. And
15 it's my understanding it's sort of a two-step
16 process; you download, and then you're given the
17 opportunity to delete or not delete. So if I'm
18 misstating that --

19 MR. BECK: Ms. Jacks is correct. Yeah, it
20 prompts the ELSUR operations technician. When the
21 download is complete, it says, "Download complete,
22 okay, erase the device, okay."

23 THE COURT: I guess the reason that you're
24 erasing it is because you're going to use it again on
25 another investigation; is that the reason?

1 MR. BECK: That's right.

2 THE COURT: Anything else, Ms. Jacks?

3 MS. JACKS: No, thank you.

4 THE COURT: Let me ask you one question:

5 So you don't add anything to the universe of requests
6 here that Ms. Sirignano and Mr. Lowry had? Those
7 three items are still the ones that -- you don't have
8 anything to add to that list?

9 MS. JACKS: I really don't. The only thing
10 I wanted to add was there are three devices, and give
11 you the names of them, because those three devices
12 were used by various cooperating witnesses in the
13 same manner.

14 THE COURT: All right. Thank you, Ms.
15 Jacks.

16 Anyone else? Mr. Lowry?

17 MR. LOWRY: Just to follow up on Ms. Jacks'
18 point. If the Court was inclined, preferably I'd
19 like to see the original devices, not to examine
20 metadata, but to test the real devices that were
21 used. But if the Court is inclined to get the
22 prototypes, I'd like to get some kind of admission
23 out of the United States about, Well, you can't
24 complain that the pressure points or the illumination
25 on this device is unlike the one on the actual

1 devices, when they have access to those and could
2 make them available for us to look at, Your Honor.
3 So that's really the only point.

4 And finally, Your Honor, in Mr. Beck's
5 defense I was complimenting his writing on the way
6 down here to my colleague, Theresa Duncan, to say:
7 He had a marvelous mentor, because you could tell by
8 the way he patterned his brief, it was definitely Mr.
9 Beck's work product. So I think it's fair to say --

10 THE COURT: You always want the judge to
11 write his opinion out of your brief. That's what
12 you --

13 MR. LOWRY: He did a good job laying it out
14 for you just in a manner that you would like, so.

15 THE COURT: Thanks, Mr. Lowry.

16 All right. Mr. Beck?

17 MR. BECK: So I see -- I think Mr. Lowry
18 makes a point. I went back over Chapman. I found it
19 during the break. It looks to me like in that case
20 what the Court required to be disclosed was the
21 evidentiary DVD. I didn't glean from that that they
22 required the device to be disclosed. And in fact,
23 then they had an audio/video technician person look
24 at the DVD, I'm assuming in the way we did today in
25 court. And they didn't find any sign of tampering.

1 And so their request to allow a forensic computer
2 scientist expert to examine the actual device was
3 denied, from what I gather reading it.

4 And I think properly so. I think, as
5 everyone acknowledges, there is nothing else on these
6 devices afterwards. And I think Mr. -- and I think
7 Special Agent Williamson's testimony was it is an
8 intentional press of a button by the operations ELSUR
9 technician to delete the device.

10 I will talk about DVD 20 that we've heard a
11 lot of testimony about. To sum up Agent Williamson's
12 testimony about DVD 20, the problems with the
13 computer battery that recorded the date and time were
14 not -- they weren't -- I guess I'm going to use my
15 own phrasing here -- like a terminal error. Meaning
16 that it corrupted the data. What happened was, when
17 that data is recorded on the device, and creates
18 those files we looked at, 1168.001, the binary coding
19 in there is all correct. But when that goes through
20 the proprietary software, it just displays the date
21 that was on the computer, which is nothing. Which is
22 that 1899 date.

23 And so I think when Ms. Sirignano was
24 saying, it would be good -- or why didn't they then
25 send that device back to Quantico, and then back to

1 the manufacturer so they could look at the device,
2 the answer is that, if there is corrupted data on a
3 device, it doesn't download, you can't complete the
4 download. What the download does is it used that
5 SHA -- I'm not technical, but that check value to
6 make sure that the data is the same. And as long as
7 it is, as long as it's all the same data on the
8 device that's downloaded onto the DVD, it completes
9 the download. And you delete it.

10 And so whether someone, the operations
11 technician in Albuquerque, or the technically trained
12 agent even saw on the player that there was no date
13 and time there, because it downloaded fully, because
14 it completed that DVD, that established that there
15 was nothing else to be gained from the device.

16 So I think Agent Williamson said there
17 would be no point in sending that back to the
18 manufacturer. And that's why, because he confirmed
19 that all the information on that device was on the
20 DVD. It's not accurate for when it was recorded, but
21 it's accurate for the information that was created on
22 the DVD.

23 So I think we've established that
24 inspecting, or having access to the devices for
25 purposes of looking at the metadata on them or

1 examining the metadata won't work. With one other
2 caveat: I think they talked about giving their
3 computer expert access to the device so that they
4 could check the data on the evidentiary DVD is the
5 same as the data provided on the copies to them.

6 That's what we went through at the
7 beginning with Special Agent Williamson, where he
8 used a third-party hash software to check the hash
9 values. So that third-party software that's
10 available to anyone, including us in this room,
11 checked and saw that the hash value that was assigned
12 when the recording was downloaded in the ELSUR
13 technician office in Albuquerque was the same as the
14 copy of the DVD he was playing today.

15 And so they can go and use -- I mean, they
16 can provide that evidentiary DVD, I'm assuming, to
17 their computer technician, computer forensic expert,
18 who can then check the hash values, and come up with
19 that same thing, that the hash values that were
20 downloaded originally as part of that file are the
21 same hash values as they will get when they run it
22 through a hash check software.

23 So then we come to the last point here,
24 which is the physical inspection of the devices.
25 Mr. Duran had, in prison, multiple devices. I

1 believe that he had an ELSUR-type HAWK, EAGLE
2 recording device; that was one. And then he also had
3 a consensual wiretap on a phone there, which was two.
4 So to say that there were five or six hours of
5 recording could be those two different mediums for
6 recording conversations. It also could be a lie.
7 And the way we test that is with Mr. Duran up there
8 on the witness stand.

9 I think that they were saying, the defense
10 was saying that they need access to the device so
11 they can prepare for the witness saying that it was
12 unintentional that they turned it off or not; they
13 didn't know they turned it off, something like that.
14 I think there are a couple of ways to corroborate
15 that or not. One would be to listen to the
16 recordings. If it stops at the end of a
17 conversation, and then turns off, that obviously
18 corroborates that they didn't turn it off
19 unintentionally, or they intentionally did it.

20 Special Agent Williamson's testimony was
21 that he couldn't tell whether they intentionally
22 turned off the recording or not was credible. You
23 can see whether the device malfunctioned in some way,
24 or the batteries died. That's all told by the flags.
25 So you can tell from the player software whether a

1 session was completed by turning on and off the
2 device.

3 If you look at the timestamps on there, you
4 can account for every hour, minute, and second that
5 it was inside the prison after it had been activated
6 the first time, to when it was turned off the last
7 time, aside from DVD 20, you can't do that on DVD 20.
8 But with the other ones, even though the dates may be
9 wrong, you're still accounting for all that time
10 there.

11 If one inspects the device and looks at it,
12 I am thinking -- I anticipate that Mr. Lowry's
13 argument about whether you can easily turn on and off
14 the device or see the light blinking would be my
15 interpretation of how easy it is to turn on and off
16 the device and see the light, which would be
17 different than Mr. Duran's or Mr. Cordova's. And I
18 say that because I anticipate that the defendant will
19 say: It's very difficult to turn on or off the
20 device unintentionally. You have to flip the button
21 or you have to press the button. And you can't do
22 that unintentionally, to which I am sure the person
23 on the witness stand saying that they did so
24 unintentionally, if that would be their testimony,
25 would say, well, it's obviously very easy because I

1 did it. I had it in my pocket. I hit the off
2 button, must have, that's why it stopped recording,
3 or it must have hit the on or off switch, that's why
4 it stopped recording.

5 So I really don't anticipate there will be
6 useful evidence gathered from looking at these
7 devices physically. I think everyone will disagree
8 about how easy or difficult it is to unintentionally
9 turn off the recording device.

10 THE COURT: Stay right there. Let me ask
11 Mr. Lowry: If the software -- given this rule change
12 that you have, and you have the hash value that on
13 the material you could check it with just commercial
14 software that's available on the market, what are you
15 going to get additional of going and looking at the
16 original?

17 I'm sorry, I should probably ask that of
18 Ms. Sirignano. What do you gain -- if you can just
19 check it with over-the-counter software, what do you
20 gain by getting the original? You can tell if there
21 has been monkey business here with over-the-counter
22 software, can't you?

23 MS. SIRIGNANO: Your Honor, based on the
24 testimony from today, the special agent said that
25 there was this over-the-counter software to compare

1 the hash values, which our expert is saying is like a
2 fingerprint of the actual recording. Now, whether or
3 not there is something other than a straight
4 comparison of the actual hash values that's on the
5 internet, I'd have to get back to the Court after I
6 speak with Mr. Bryan.

7 THE COURT: Because when I read that rule,
8 which they are educating us as judges at schools and
9 seminars, it seems to me that what Mr. Beck is saying
10 is correct, you're not going to gain anything by
11 putting your hands on the original, because the copy
12 you can tell there was a problem.

13 MS. SIRIGNANO: I disagree with that, Your
14 Honor, insomuch as the FBI did decide to destroy the
15 evidence on the device.

16 THE COURT: But that's going back to the
17 original issue, which, you know, you'll have your say
18 at trial on that. But at least the copy, I'm not
19 understanding how looking at the copy gives you
20 anything more than -- the first copy gives you
21 anything more than looking at the second or third
22 copy, because of the hash values they're going to be
23 on all.

24 MS. SIRIGNANO: Your Honor, what we didn't
25 hear today was that the agent did the hash value

1 check on the original. We heard that the agent --
2 the original copy, let's just say it that way, which
3 is in evidence -- and who knows what --

4 THE COURT: But I guess what I'm
5 understanding, from what I'm hearing at schools, and
6 what the rules say is, you could take the hundredth
7 copy and determine that -- if there is a problem,
8 because of the hash value.

9 MS. SIRIGNANO: Unless, of course, Your
10 Honor, the scenario would be is that the original
11 copy, the hash value itself was manipulated in some
12 way. And then each subsequent copy, whether it's the
13 hundredth copy, would reflect the initial
14 manipulation. We don't know that. We didn't hear
15 that from the agent today. What we heard was that he
16 looked at copies, which --

17 THE COURT: From what I understand, you
18 can't do that.

19 MS. SIRIGNANO: I don't -- Your Honor, if I
20 could have a minute to consult with my expert, I can
21 get back to you.

22 THE COURT: All right.

23 MS. SIRIGNANO: Thank you.

24 MR. BECK: I think I can answer that. I
25 got into that with Agent Williamson about how the

1 proprietary software works; that they give that all
2 to ADS, the company that manufactures that, so that
3 they have the checks and balances in place, meaning
4 that, if there is some manipulation of the data,
5 which everyone agrees they really can't do, it just
6 won't play on that player. So that's how they
7 double-check the ADS works.

8 So if you think about this, where we
9 have -- you know, I think on one hand that other law
10 enforcement, state, local, and international use this
11 company to manufacture devices is probative of the
12 checks and balances they have in place. But compared
13 to, like a painting that we've never seen, borrowing
14 from Mr. Lowry's example -- he's obviously much more
15 well versed in art history than I am -- but a
16 painting that we've never seen, the way that we would
17 check to make sure that the second -- the copy in
18 court is an accurate representation of the original
19 is different when we're talking about a recording.

20 You can authenticate a voice recording by
21 having, you know, some expert come in and say that
22 person's voice is exactly what I'm hearing on this
23 end. So the way that we check that -- I think
24 Special Agent Williamson got into this a little
25 bit -- is that they make a recording with the device,

1 maybe they record themselves -- Special Agent
2 Williamson would record himself -- and then they go
3 back and they play that through the recorder. And if
4 it plays and it is his voice, well, then you know
5 that whatever internal coding the proprietary
6 software has, has worked, because you downloaded it;
7 it didn't show an error when you downloaded it; you
8 played it, it was able to play, and it's your voice
9 on the recording. And so that's the way that they
10 can double-check to make sure that the data integrity
11 is being maintained without having to, number one,
12 get access of their proprietary software, and number
13 two, check with a third-party vendor to make sure
14 that someone has done that. Because a voice
15 recording, there are these things that you can do to
16 make sure that the checks and balances are in place.

17 THE COURT: Well, let me ask you this: How
18 much resistance do you have to their expert coming
19 over and doing it on the original?

20 MR. BECK: I think we could -- I certainly
21 think we could accommodate that. I don't know
22 whether we need to. Because, as Ms. Sirignano
23 correctly pointed out, Special Agent Williamson did
24 not testify that he has verified the values -- the
25 hash values of the original evidentiary DVDs, because

1 I didn't ask him to. If we seek to admit these at
2 trial, we would either have to have someone testify
3 to that, stipulate to it, which would mean we'd have
4 to prove that we did it, or a certificate, likely
5 from Special Agent Williamson, that says: I have had
6 in my possession the original evidentiary DVDs. I
7 have done the hash value checks and they all check
8 out.

9 So I'm saying I don't have much opposition
10 to that, because it's going to have to be done
11 somehow. I just don't know if we need to do that.

12 THE COURT: Ms. Sirignano.

13 MS. SIRIGNANO: Your Honor, so after
14 consulting with Mr. Bryan, the way he explained this
15 to me is that, when you download the original
16 recording, it creates a hash on that copy. And then
17 each subsequent copy creates a hash or a fingerprint.

18 And so what we heard today was that this
19 expert didn't go back to the original hash from the
20 original downloaded recording to make that original
21 copy. And so all he did was compare his copy to the
22 previous hash.

23 There is one file on all of this -- the
24 evidence that was given to us that contains all the
25 data values. And if there was any way that those

1 data values or the hash within these data values were
2 manipulated, then you'd have a problem with the
3 subsequent copies. And Mr. Bryan tells me that it
4 would take about an hour total to take a look at this
5 and to ascertain if the integrity of the data is
6 still there, Your Honor. And we would just ask that
7 we could do that sooner than later.

8 The Government did tell me that they were
9 going to use these recordings. First on my 12(b) 4 B
10 motion, I wrote the Government a letter, and they
11 wrote me back, and based on my motions to suppress
12 Mr. Beck emailed me and told me they were going to
13 use this evidence at trial. So I would just request
14 that we get a time as soon as possible, before the
15 holidays, to take look at this digital evidence, Your
16 Honor. Thank you.

17 THE COURT: Well, you're still talking --
18 it's still the original request, take the original
19 disc, not the copy, and check the hash values on
20 that?

21 MS. SIRIGNANO: Right. And I think we're
22 saying the same thing. It's the original disc that's
23 in evidence that can be checked out, and looked at by
24 Mr. Bryan and his equipment.

25 THE COURT: Well, do you oppose that?

1 MR. BECK: No, we can coordinate that. I
2 mean, there is no reason to oppose that.

3 THE COURT: Let me ask on the physical
4 check that Mr. Lowry -- if the concern of the FBI is
5 you don't want anybody to see the shape or the size
6 of it, would there be a way to cover all that device,
7 including covering the outlets, which doesn't seem to
8 be of interest to the defendants, and just let Mr.
9 Lowry come in and push the button, and see if he can
10 any argument from that, and then look at the lights,
11 and but you would keep covered the device's size,
12 shape, and the outlets?

13 MR. BECK: That, I can't say. That would
14 go above my head to get clearance on that. But it
15 seems like that would be a rational middle ground for
16 everyone to meet, and it seems like it would assuage
17 sort of the FBI's concerns, and allow Mr. Lowry to
18 get what he's looking for, which I don't know that
19 he's demonstrated a compelling need. But it was a
20 good argument. So --

21 THE COURT: Well, what concerns me is -- I
22 don't want to put words in Mr. Lowry's mouth, but it
23 seems like attacking Duran's recording abilities is
24 about his only defense, or his chief defense here.
25 If that's really where they're going, but it's that

1 crucial that they're going to go after his recording
2 abilities, and I guess credibility as well.

3 MR. BECK: I agree, Your Honor. And he did
4 come forth with -- I mean, I think we look at the
5 Chapman decision, and why they didn't allow the
6 devices to be produced, which was that they didn't
7 have evidence that the data had been manipulated at
8 all. I think Mr. Lowry made a good point that, to
9 corroborate some of Mr. Baca's arguments about
10 Mr. Duran's contentions about the recordings, he
11 needs to have access to the device.

12 So I think the Court's middle ground is a
13 rational solution. And as I said, I can't represent
14 that we would agree to that, but it sounds rational
15 to me.

16 THE COURT: What is the -- I mean, if this
17 is revealing some strategy, you know, I'll entertain
18 that I don't want an answer, but what is the
19 Government's position going to be in explaining how
20 Duran is saying he's got five, six hours, and we've
21 got less than an hour?

22 MR. BECK: I can't say that, because I
23 don't know, not because I don't want to answer it. I
24 mean, that's just one of those things we have at
25 trial. If we don't have five or six hours of

1 recording at that point in time to back that up, I
2 don't know that we'll be able to explain that, other
3 than relying on Mr. Duran's explanation.

4 THE COURT: All right. Well, my suggestion
5 on this is maybe you talk to the people you need to
6 talk to, see if something like that could be worked
7 out, and then, I think we probably exhausted the
8 issues on this recorder device.

9 MR. BECK: I think so, too, Your Honor. It
10 would be my expectation that we could have an answer
11 to Mr. Lowry by the end of the hearings this week,
12 and to the Court. To the extent that Mr. Lowry gets
13 to see it, we can decide whether one disclosure is
14 sufficient or whether there will be multiple
15 defendants there who have shown a compelling need for
16 it. But certainly, I think, Mr. Lowry has, and
17 probably a lot of the other defendants are in the
18 same position as he is.

19 THE COURT: All right. Anything else on
20 the motion, Mr. Beck?

21 MR. BECK: Just -- yeah, for the record, I
22 didn't know this, but I've been informed of the
23 corresponding DVD numbers, so when we were referring
24 to 1D55, that's DVD 19; 1D56 is DVD 20, 1D60 is DVD
25 23, and 1D58 is DVD 17.

1 THE COURT: All right. Anything further?

2 MR. BECK: Nothing further, Your Honor.

3 THE COURT: Thank you, Mr. Beck.

4 Everybody comfortable with where I'm
5 leaving it for at least tonight? Mr. Lowry?

6 MR. LOWRY: Yes, Your Honor. I did have --
7 Your Honor, I apologize for not having this printed
8 off earlier, but it goes to the question you just
9 asked. And I approached the United States, and Mr.
10 Castellano doesn't have any objection. I was going
11 to ask Mr. Beck. But we were going to offer as an
12 exhibit the one page out of the master text file,
13 which is Duran's text to the case agent about the
14 five or six hours of recording.

15 I would just point out, at this time it was
16 very early on, about this text took place on October
17 23, 2015. And while Mr. Beck posed the argument that
18 he may have been talking about other recordings,
19 because he had a cellphone, at the time this text was
20 sent, Mr. Duran hadn't revealed to anyone that he
21 possessed the cellphone, so he hadn't started to
22 actively record anyone, especially my client, using
23 that device. So I mean, the way I'm reading this is
24 all attributed to that one device. But I could be
25 wrong, Your Honor. But I'd like to offer that as an

1 exhibit. And I don't think I have an objection from
2 my opposing counsel.

3 THE COURT: What is that, that will be Mr.
4 Baca's Exhibit A?

5 MR. LOWRY: It will be A.

6 THE COURT: Any objection to that, Mr.
7 Beck?

8 MR. BECK: No, Your Honor.

9 THE COURT: Anyone else have an objection?

10 MS. JACKS: Do you have a Bates number?

11 MR. LOWRY: I'm looking at a PDF of the
12 master text file, and that's page 395 out of 838.
13 But I'm happy to circulate a copy to everyone.

14 THE COURT: Give me one. Anthony Baca's
15 Exhibit A will be admitted in evidence.

16 MR. LOWRY: Thank you, Your Honor.

17 MR. BECK: And I should note, because
18 seeing Mr. Lowry up again made me think of the end of
19 his argument -- I do not know at this point, but I
20 will get answers for everyone -- which of the
21 original recording devices still exist today. Some
22 have been decommissioned. These were older model
23 devices.

24 That being said, the FBI Office of
25 Technology Division, Special Agent Williamson

1 possesses exemplars of the models. So I think for
2 the purposes of what Mr. Lowry and Mr. Baca want to
3 see the device for, for purposes of looking at the
4 physical components, the on/off switch and the
5 recording light, those exemplars will be identical to
6 the devices used in this case.

7 THE COURT: So some of them will be the
8 actual ones, and some will be the exemplars?

9 MR. BECK: That's my expectation. And I'll
10 let everyone know that.

11 THE COURT: All right. Thank you, Mr.
12 Beck.

13 There was some issue about exemplars, some
14 representation. I've lost track who was wanting some
15 representation. Was that you, Ms. Jacks?

16 MS. JACKS: No.

17 THE COURT: No, it wasn't you?

18 MR. BECK: That was Mr. Lowry again. And
19 we will stipulate to his request.

20 THE COURT: Okay. All right. There is
21 nothing else on the recorder device.

22 Ms. Wild has been out of the pocket all day
23 dealing with that funeral. What was the agreement
24 among the parties in your discussions with her as to
25 what we'd go to next?

1 MR. BECK: I think the parties intended to
2 go back to the finishing up of the James hearing.

3 THE COURT: The James hearing, okay. Is
4 everybody in agreement with that?

5 MS. SIRIGNANO: Your Honor, I don't believe
6 that's correct. But I need to check my emails first.
7 I think it was Mr. Villa's and Ms. Bhalla's motions
8 to suppress, because they've got their witnesses
9 subpoenaed for tomorrow and Wednesday.

10 MS. BHALLA: That's correct, Your Honor.
11 Our expert is here from D.C., and --

12 MR. BECK: I meant this afternoon --
13 tomorrow -- yeah, my impression is that tomorrow
14 morning. I know the Court likes to use all the time,
15 so we've got three minutes left. I thought that's
16 what the Court was referring to.

17 THE COURT: Well, how much more do you have
18 on the James hearing? A fair amount?

19 MR. BECK: I think we've still got a fair
20 amount, yeah. Tomorrow, I believe, first thing we're
21 going to start with the motion to suppress.

22 THE COURT: All right. So everybody is in
23 agreement where we're going?

24 Well, let's go ahead -- you're right, I am
25 very tempted to try to get three minutes out. But

1 let's go ahead and shut it down for the day. And
2 I'll see y'all tomorrow morning.

3 All right. I appreciate everybody's hard
4 work. Everybody be safe in your travels.

5 (The Court stood in recess.)
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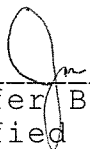
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UNITED STATES OF AMERICA

DISTRICT OF NEW MEXICO

I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,
Official Court Reporter for the State of New Mexico,
do hereby certify that the foregoing pages constitute
a true transcript of proceedings had before the said
Court, held in the District of New Mexico, in the
matter therein stated.

In testimony whereof, I have hereunto set my
hand on December 18, 2017.



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